

IN THE

UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE NINTH CIRCUIT.

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THE NEW YORK LIFE INSURANCE  
COMPANY,

*Plaintiff in Error,*

vs.

FRANK E. DINGLEY, AS ADMINISTRATOR  
OF THE ESTATE OF WALTER F. DINGLEY,  
(DECEASED).

*Defendant in Error.*

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TRANSCRIPT OF RECORD.

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In Error to the Circuit Court of the United States for  
the District of Washington, Northern  
Division.

FILED

SEP 3 - 1899



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*In the Circuit Court of the United States for the District of  
Washington, Northern Division.*

FRANK E. DINGLEY, as Administra-  
tor of the Estate of Walter F. Ding-  
ley, Deceased,

Plaintiff and Defendant in Error,

vs.

NEW YORK LIFE INSURANCE  
COMPANY,

Defendant and Plaintiff in Error.

### **Stipulation as to Printing of Record.**

It is hereby stipulated by and between the parties here-  
to, through their respective attorneys, that in the print-  
ing of the record of this cause for use in the United States  
Circuit Court of Appeals for the Ninth Circuit, at San  
Francisco, California, the clerk of said last named court  
may omit therefrom the motion for bill of particulars;  
the motion to require the answer to be made more defi-  
nite and certain; the names of the jurors who tried said  
cause; and any other papers not necessary to the juris-  
diction of said Court of Appeals, nor to the proper presen-  
tation of the errors complained of, which by the custom  
and practice of said Circuit Court of Appeals it is not  
necessary or desirable to have appear in the printed

record; but nothing herein contained shall be deemed in anywise to limit or abridge the discretion of the clerk of said Appellate Court in the matter of printing said record.

Dated this 26th day of July, 1898.

PRESTON, CARR & GILMAN,  
Attorneys for Defendant in Error.

GEORGE H. DURHAM,  
Of Attorneys for Plaintiff in Error.

[Endorsed]: Filed Aug. 18, 1898. F. D. Monckton,  
Clerk.

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**Affidavit of Service.**

State of Washington, )  
County of King. ) ss.

W. Mervyn Williams, being first duly sworn, upon his oath deposes and says: That at all times hereinafter mentioned and referred to he has been and now is a citizen of the United States, over the age of 21 years, not a party to the within entitled action and competent to be a witness upon the trial of the same. That he received the annexed summons on the 13th day of October, A. D. 1897, and on the 13th day of October, A. D. 1897, in the county of King, State of Washington, duly and regularly served the same upon the within named defendant, the New York Life Insurance Company, by then and there delivering to and leaving with Lyman D. Sayres, who was then and there the duly constituted and appointed agent

of the said defendant, residing at the place in said State where the principal place of business of said defendant is carried on, a true and correct copy of said summons, together with a true and correct copy of the complaint in the within entitled action; and that the said Lyman D. Sayres, upon whom service was made as aforesaid, was made such agent by the said defendant by an instrument in writing duly executed by the said defendant and filed for record in the office of the Secretary of State of the State of Washington, under and pursuant to the statute in that behalf provided.

W. MERVYN WILLIAMS,

Subscribed and sworn to before me this 13th day of October, A. D. 1897.

JAMES B. MURPHY,

Notary Public in and for the State of Washington, Residing at the City of Seattle in said State.

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*In the Superior Court of the State of Washington, for the County of King.*

FRANK E. DINGLEY, as Administrator of the Estate of Walter Frederick Dingley, Deceased,

Plaintiff,

vs.

THE NEW YORK LIFE INSURANCE COMPANY,

Defendant.

**Summons.**

The State of Washington, to the said New York Life Insurance Company, Defendant.

You are hereby summoned to appear within twenty (20) days after service of this summons upon you, exclusive of the day of service, and defend the above-entitled action in the court aforesaid, and answer the complaint of the plaintiff, and serve a copy of your answer upon the undersigned attorneys for plaintiff, at their office below stated, and in case of your failure so to do, judgment will be rendered against you according to the demand of the complaint, which will be filed with the clerk of said court (a copy of which is herewith served upon you).

McCUTCHEON & GILLIAM, and  
PRESTON, CARR & GILMAN,

Plaintiff's Attorneys. Postoffice Address: Room 304,  
Pioneer Block, Seattle, King County, Washington.

Filed Nov. 3, 1897. Geo. M. Holloway, Clerk.



*In the Superior Court of the State of Washington, for the  
County of King.*

FRANK E. DINGLEY, as Administrator of the Estate of Walter Frederick Dingley, Deceased,

Plaintiff;

vs.

THE NEW YORK LIFE INSURANCE COMPANY,

Defendant.



### **Complaint.**

The plaintiff complaining of the defendant alleges:

#### **I.**

That the said defendant, the New York Life Insurance Company, is a corporation duly organized and existing under and by virtue of the laws of the State of New York, and has its principal place of business in the city of New York in said State, and at all the times hereinafter mentioned has been and now is duly authorized to do business in the State of Washington.

#### **II.**

That heretofore, to-wit, on the 3rd day of August, 1894, the said defendant, in consideration of the sum of \$158, to it paid by the said Walter Frederick Dingley, duly made, executed, issued, and delivered to him, the said Walter Frederick Dingley, under the name of Walter F. Dingley, at the city of New York, in the State of New York, its certain policy and contract of insurance in writing, on the life of the said Walter Frederick Dingley, for the sum of five thousand dollars, in the words and figures following, to-wit:

“Number 628,645.

Amount \$5,000.

The New York Life Insurance Company by this policy of insurance doth promise and agree to pay five thousand dollars at its office in the city of New York, to the insured executors, administrators or assigns immediately upon receipt and approval of proofs of the death during the continuance of this policy of Walter F. Dingley of Oakland in the County of Alameda, State of California (herein called the insured).

And the said company doth further promise and agree, that if the death of the insured shall occur prior to the nineteenth day of July, in the year nineteen hundred and fourteen, and if the premiums have been paid in full to the time of such death, then it will pay, in addition to the sum above insured, an amount equal to ——— the total premiums received (taken at the tabular annual rate).

This contract is made in consideration of the written application for this policy, and of the agreements, statements and warranties thereof which are hereby made a part of this contract, and in further consideration of the sum of one hundred and fifty-eight dollars and ——— cents to be paid in advance, and of the payment of a like sum on the nineteenth day of July in every year thereafter during the continuance of this policy, until twenty full years' premiums shall have been paid.

Incontestability.—After this policy shall have been in force one full year, if it shall become a claim by death, the company will not contest its payment, provided the conditions of the policy as to the payment of premiums have been observed.

The benefits and provisions placed by the company on the next page are a part of this contract, as fully as if recited over the signature hereto affixed.

Age 25, Annual premium, \$158.00. Examined R. R.

C. Limited payment life. Accumulation L. P. R. 94-83.

In witness whereof the said New York Life Insurance Company has, by its duly authorized officers, signed and

delivered this contract this third day of August, one thousand eight hundred and ninety-four.

JOHN A. McCALL, President.

CHAS. C. WHITNEY, Secretary.

Benefits and Provisions Referred to in this Policy.

Benefit at end of accumulation period.

If the insured is living on the 19th day of July in the year nineteen hundred and fourteen, on which date the accumulation period of this policy ends, and if the premiums have been paid in full to said date, the insured shall be entitled to one of the six benefits following:

First.—To continue the policy, without further payment of premiums, and receive the dividends then apportioned by the company, either

(1) In cash, or

(2) In an annuity; or

(3) In additional paid up insurance, conditioned upon satisfactory re-examination.

Second.—To exchange the policy for its entire value as stated below ("), either

(4) In cash; or

(5) In an annuity for life; or

(6) In a paid up policy; provided that for any amount of paid up insurance in excess of the amount of this policy a satisfactory re-examination is necessary.

(") The said entire value of the policy consists of the guaranteed reserve twenty-one hundred and forty dollars (\$2140), and in addition thereto the dividends then apportioned by the company.

The insured shall notify the company, in writing, prior to the end of the accumulation period, which benefit is selected.

Failing such notification, the apportioned dividend shall be applied to the purchase of an annuity as stipulated in benefit (2) above.

No dividend shall be apportioned or paid on this policy before the end of the accumulation period. If this policy is continued in force beyond the accumulation period, a dividend will be apportioned to the insured at the end of such period of five years thereafter.

Advances within accumulation period.

The company will make advances as loans upon this policy at the fifth of any subsequent anniversary of the insurance, within the accumulation period, under the following conditions:

First.—That premiums are paid in full to the time when the loan is made, including the premium for the entire insurance year then beginning.

Second.—That the aggregate amount of loans outstanding from the sixth to the tenth years inclusive, shall not exceed \$435, from the eleventh to fifteenth years, inclusive, shall not exceed \$935; and from the sixteenth to the twentieth years, inclusive, shall not exceed \$1500.

Third.—That the policy shall be duly assigned to the company as collateral security for the loans, and deposited at the home office.

Fourth.—That interest at the rate of five per cent per annum shall be paid upon all such loans at the anniversary of the insurance next succeeding, and annually thereafter until the loans are paid off.

Fifth.—That the loans shall be for such time as the borrower may elect, not longer, however, than to the end of the accumulation period.

(Any indebtedness to the company, including any balance of the current year's premium remaining unpaid, will be deducted in any settlement of this policy or of any benefit thereunder.)

Powers not delegated.

No agent has power in behalf of the company to make or modify this or any contract of insurance, to extend the time for paying a premium, or waive any forfeiture, or to bind the company by making any promise or making or receiving any representation or information. These powers can be exercised only by the president, vice-president, second vice-president, actuary or secretary of the company, and will not be delegated.

Payment of premiums.

All premiums are due and payable at the home office of the company unless otherwise agreed in writing, but may be paid to agents producing receipts signed by the president, vice-president, second vice-president, actuary or secretary and countersigned by such agents. If any premium is not thus paid on or before the day when due, then (except as hereinafter otherwise provided) this policy shall become void, and all payments previously made shall remain the property of the company.

Grace.

After this policy shall have been in force three months, a grace of one month will be allowed in payment of subse-

quent premiums, subject to an interest charge of five per cent per annum for the number of days during which the premium remains due and unpaid. During said month of grace the unpaid premium, with interest as above, remains an indebtedness due the company, and in the event of death during the said month, this indebtedness will be deducted from the amount of the insurance.

#### Proofs of death.

Within one year after the death of the insured the company must be furnished at its office in the city of New York, with proofs of death which shall comprise satisfactory statements establishing the claim. Such statements must comply fully with the company's present forms.

If it is found that the age of the insured was understated in the application, the amount of insurance payable shall be such proportion of the amount of the policy as the premium paid bears to the required premium at the true age.

#### Assignments.

Any assignment of this policy must be made in duplicate, and both copies must be sent to the home office, one of them to be retained by the company. The company has no responsibility for the validity of any assignment.

#### Nonforfeiture.

After this policy shall have been in force three full years, in case of nonpayment of any premium subsequently due, and upon the payment within thirty days thereafter of any indebtedness to the company on account of

this policy, and provided the policy has not been terminated by death within the month of grace allowed in the payment of premiums (1) the insurance will be extended for the face amount, as provided in the table below; or (2) on demand made within six months after such nonpayment or premium due, with surrender of this policy, paid up insurance will be issued for the reduced amount provided in the said table; or (3) the policy will be reinstated within the said six months, upon payment of the overdue premium with interest at the rate of five per cent per annum, if the insured is shown by evidence satisfactory to the company to be in good health.

Table of Guarantees, if Payment of Premium is Discontinued Provided there Is no Indebtedness against the Policy.

(Pursuant to the Insurance Law, Chapter 690, Laws of 1892 of the State of New York.

If the premiums are paid	(1) The insurance of \$5,000 (without participation in profits) will be extended	or (2) The property may be converted into nonparticipating paid-up insurance.
to July 19, 1897	to Aug. 19. 1902	of \$ 750
" " " 1898	" Oct. " 1906	" 1,000
" " " 1899	" Jan. " 1911	" 1,250
" " " 1900	" Aug. " 1914	" 1,500
" " " 1901	" Feb. " 1918	" 1,750
" " " 1902	" June " 1921	" 2,000
" " " 1903	" June " 1924	" 2,250
" " " 1904	" Mch. " 1927	" 2,500
" " " 1905	" Dec. " 1929	" 2,750
" " " 1906	" June " 1932	" 3,000
" " " 1907	" Sept. " 1934	" 3,250
" " " 1908	" Oct. " 1936	" 3,500
" " " 1909	" Sept. " 1938	" 3,750
" " " 1910	" July " 1940	" 4,000
" " " 1911	" Apr. " 1942	" 4,250
" " " 1912	" Jan. " 1944	" 4,500
" " " 1913	" Oct. " 1945	" 4,750
		\$2,155



That attached to said policy and made a part thereof was an abstract of the application of the said Walter Frederick Dingley for said policy, said application being in the words and figures following, to-wit:

“Abstract (E. & O. E.) of the application for insurance in the New York Life Insurance Company.

.1 Name (in full) of the person applying for insurance on his life, Walter Frederick Dingley.

2. A. Residence: State, California; County, Alameda; Town, Oakland; Street, Fifteenth, No. 830. B. Place of business, San Francisco, San Francisco, Front 204.

3. A. Occupation or employment, if more than one state all, Commission Merchant Lumber.

Note.—It is not a sufficient answer to state (for example) to state “merchant,” “mechanic,” “salesman,” or “clerk,” the particular branch of business or trade is to be specified, and full particulars given, especially where the occupation is in any way hazardous.

B. Are you married? Yes.

4. A. Place of birth, San Francisco. B. Race or nationality, White. C. Born on first day of January, 1870. D. Age nearest birthday, 25.

5. If you have any insurance on your life, state in what companies, when taken, the kind of policies, and their respective amounts: I have no insurance except \$10,000, Connecticut Mutual, lapsed, and 371454 N. Y. Life, lapsed.

6. A. Has any proposal or application to insure your life ever been made to any company or agent upon which a policy has not been issued as applied for? A. No. B. If so, when, to what company, etc. B.

7. To whom is the insurance applied for to be payable in event of death? (Name in full.) Estate. B. Present residence? C. Relationship to you?

8. If the application is for an endowment or limited endowment policy, to whom is the endowment to be payable at its maturity?

Note.—This question refers only to policies issued on the endowment or limited endowment premium tables, not to policies issued on any life-table.

9. A. Do you desire a policy on the "Accumulation Plan Policy" plan, as set forth in that policy form? Yes. B. If so, which accumulation period do you select? I select the 20 year accumulation period. C. Do you desire a policy with "premium return" in case of death within the accumulation period? Yes. D. If so, is such return to be equal to one-half of all the premiums paid? Equal to all the premiums paid.

10. Sum to be insured, \$5,000. Premium payable annually on what table? Life, 20 premiums in ——— years.

Note.—Strike out the rate not desired.

I do hereby agree as follows: 1. That the statements and representations contained in the foregoing application together with those contained in the declarations made by me to the medical examiner, shall be the basis of the contract between me and the New York Life Insurance Company; that I hereby warrant the same to be full, complete and true, whether written by my own hand or not, this warranty being a condition precedent to, and a consideration for the policy which may be issued hereon. 2. That inasmuch as only the officers at the home office of said company, in the city of New York, have authority to de-

termine whether or not a policy shall issue on any application, and as they act on the written statements and representations referred to, no statements, representations, promises or information made or given by or to the person soliciting or taking this application for a policy, or by or to any other person, shall be binding on said company, or in any manner affect its rights unless such statements, representations, promises or information be reduced to writing and presented to the officers of said company, at the home office, in this application. 3. That in any distribution of surplus or profits the principles and methods which may be adopted by said company for such distribution, and its determination of the amount equitably belonging to any policy which may be issued under this application, shall be and are hereby ratified and accepted by and for every person who shall have or claim any interest under such policy. 4. That any policy which may be issued under this application shall not be in force until the actual payment to, and acceptance of the premium by said company, or its authorized agent, during my lifetime and good health. 5. That the contract, contained in such policy and in this application, shall be construed according to the law of the State of New York, the place of said contract being agreed to be the home office of said company in the city of New York. 6. That no suit shall be brought against said company under said contract after the lapse of two years from the time when the cause of action accrues.

Dated at San Francisco this 19th day of July, 1894.

Signature of person applying for insurance on his life  
(Write the name in full). Walter Frederick Dingley.

Witness ———— Agent. C. A. Pickard, 93-63.

Declarations made to the medical examiner of the New York Life Insurance Company.

1. Have you had, since childhood, any of the following complaints? Answer (Yes or No) opposite each:

Apoplexy . . . . .	No	Disease of the Kidneys . . . . .	No	Gout . . . . .	No
Asthma . . . . .	No	Disease of Liver . . . . .	No	Insanity . . . . .	No
Bilious Colic . . . . .	No	Disease of Lungs . . . . .	No	Jaundice . . . . .	No
Cancer . . . . .	No	Disease of Urinary Organs . . . . .	No	Paralysis . . . . .	No
Dropsy . . . . .	No	Fistula . . . . .	No	Piles . . . . .	No
Disease of Brain . . . . .	No	General Debility . . . . .	No	Pleurisy . . . . .	No
Rheumatism . . . . .	No			Pneumonia . . . . .	No
Scrofula . . . . .	No				
Smallpox . . . . .	No				
Spinal disease . . . . .	No				
Spitting or Raising Blood . . . . .	No				
Syphillis . . . . .	No				
Yellow Fever . . . . .	No				

Give full particulars of any serious illness

You have had since childhood

Never has been

When were you last confined to the house by illness?

How? . . . . .

2. Have you ever had any severe headaches, vertigo, fits, or any nervous or muscular trouble? No.

3. A. Are you subject to cough, expectoration, palpitation or difficulty of breathing? A. No. B. Have you ever been? If so, to which, when and full details? B. No.

4. Are you subject or predisposed to dyspepsia, dysentery or diarrhoea? No.

5. A. What is the name and residence of your physician? A. None. B. When and for what have his services been required? B.

6. A. What other physician have you consulted? None. B. When and for what? B.

7. Has any proposal or application to insure your life ever been made to any company or agent, upon which a policy has not been issued as applied for? A. No. B. If so, when, to what company, etc. B.

8. Has any physician given an unfavorable opinion upon your life with reference to life insurance? No. If so, state particulars.

9. The medical examiner must have full and complete answers to each of the following queries. Avoid all indefinite terms:

	Age (if living)	Condition of health	Age at death	Cause of death	How long ill	Previous health
Father			60	Foreign growth on face	Don't know	Good
Mother	37	Good				
	29	"				
3 Brothers	25	"				
	22	"				
1 Sister	17	"				
Father's Father			35	Accident	Don't know	Good
Father's Mother			55	Don't know	"	
Mother's Father	88	"				
Mother's Mother			40	Don't know		

10. A. Have any of the above or any of your uncles or aunts now, or ever had, consumption, cancer, gout, scrofula, diabetes, rheumatism, epilepsy, insanity, or other hereditary disease? A. No. B. If so, give full particulars of each case. B.

11. A. Are your habits at the present time, and have they always been sober and temperate? Yes. B. To what extent do you use intoxicating drinks as a beverage (Average amount daily)? B. No daily habit. C. Are you now engaged in any way in the retailing of alcoholic liquors? C. No. D. Have you ever been so engaged? D. No.

12. A. Where have you resided (during summer and winter) during each of the last ten years? A. Oakland, Calif. B. Do you contemplate changing your place of residence or making a journey (Yes or no)? If yes, when and to what place? B. No.

13. A. How long have you been engaged in your present occupation? A. Seven years. B. What was your business prior to your present occupation? B. Student. C. Do you contemplate making any change, temporary or permanent, in occupation (Yes or no)? If yes, when and to what? A. No.

I hereby declare that the accompanying application to the New York Life Insurance Company, dated July 19th, 1894, for an insurance on my life, was signed by me, and that I renew and confirm my agreement therein; and I also agree that I expressly waive all provisions of law forbidding any physician or other person who has attended or examined me, from disclosing any knowledge or information which he thereby acquired.

WALTER FREDERICK DINGLEY.”

### III.

That on the 12th day of November, A. D. 1896, at the city of Seattle, county of King, State of Washington, the said Walter Frederick Dingley died intestate.

### IV.

That subsequent to the death of said Walter Frederick Dingley such proceedings were had in the Superior Court of the County of King, State of Washington, the same being a court of competent jurisdiction, that on the 5th day of December, A. D. 1896, this plaintiff, Frank E. Dingley, was by said court duly appointed administrator of the estate of Walter Frederick Dingley, deceased, and thereafter duly qualified as such administrator, and on the said 5th day of December, A. D. 1896, letters of adminis-

tration were duly issued by said Superior Court to the said Frank E. Dingley, which said letters have never been revoked, and the said Frank E. Dingley is now the duly appointed, qualified and acting administrator of the estate of Walter Frederick Dingley, deceased.

V.

That on the 5th day of April, 1897, the said plaintiff duly furnished the said defendant with proofs of death of said Walter Frederick Dingley, which was received and accepted by said defendant as satisfactory; and the said Walter Frederick Dingley and the plaintiff each duly performed all the conditions of said policy on their part.

VI.

That said defendant has not paid the sum due on said policy or any part thereof, although demand for such payment has been duly made, but on the contrary said defendant has denied all liability under said policy, and there is now due and owing to the plaintiff from said defendant thereon the sum of five thousand dollars, with interest at the rate of seven per cent per annum from the 5th day of April, A. D. 1897.

Wherefore, plaintiff prays judgment against the defendant for the sum of five thousand dollars, with interest thereon at seven per cent per annum from the 5th day of April, 1897, and costs of suit.

McCUTCHEON & GILLIAM, and  
PRESTON, CARR & GILMAN,

Attorneys for Plaintiff.

State of Washington, }  
 County of King. } ss.

Frank E. Dingley, being first duly sworn, on his oath deposes and says: That he is the administrator of the estate of Walter Frederick Dingley, deceased, and plaintiff in the above-entitled action, that he has heard the foregoing complaint read, knows the contents thereof, and believes the same to be true.

- FRANK E. DINGLEY.

Subscribed and sworn to before me this 12th day of October, 1897.

JAMES B. MURPHY,

Notary Public in and for the State of Washington, Residing at Seattle in said State.

Filed November 3, 1897. Geo. M. Holloway, Clerk.

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*In the Superior Court of the State of Washington, for the County of King.*

FRANK E. DINGLEY, as Administrator of the Estate of Walter Frederick Dingley, Deceased,

Plaintiff,

vs.

THE NEW YORK LIFE INSURANCE COMPANY,

Defendant.



**Petition of Removal to the United States Circuit Court for  
the District of Washington, Northern Division.**

To the Honorable Judge of the above-entitled court:

Comes now your petitioner, the New York Life Insurance Company, defendant herein, and respectfully shows to your Honorable Court that the matter and amount in dispute in the above-entitled action is the sum of five thousand dollars, exclusive of interest and costs, and exceeds the sum of two thousand dollars, exclusive of interest and costs; that the action is between citizens of different States.

That your petitioner, the defendant in the above-entitled action, was at the time of the commencement of said action and still is a resident of and a citizen of the State of New York, to-wit, a private corporation organized and existing under and by virtue of the laws of the State of New York, and a nonresident of the State of Washington.

That the plaintiff above named was then and still is a resident of the city of Seattle, county of King and State of Washington, and your petitioner offers herewith a good and sufficient surety for entering in the Circuit Court of the United States for the District of Washington, Northern Division, on the first day of its next session, a copy of the record in this suit, and for paying all costs that may be awarded by said Circuit Court of the United States, if the said Court shall hold that this suit was wrongfully or improperly removed thereto; and your petitioner prays this honorable court to proceed no further herein except to make an order of removal as required by law, and to accept the said surety and bond, and to cause the said record

herein to be removed to the Circuit Court of the United States in and for the District of Washington, Northern Division.

And your petitioner will ever pray.

NEW YORK LIFE INSURANCE COMPANY,

Petitioner.

By GEO. H. DURHAM,

Agent Attorney.

GEO. H. DURHAM,

PLATT & PLATT and

R. W. EMMONS,

Attorneys for Petitioner.

State of Washington, }  
County of King. } ss.

I, Geo. H. Durham, being first duly sworn, depose and say, that I am an agent and one of the attorneys of the New York Life Insurance Company, the defendant corporation in the above-entitled action; that the foregoing petition is true, as I verily believe; that I make this affidavit for the reason that I am attorney for said defendant; that the facts are within my knowledge and that said corporation is a nonresident of this state and its president, vice-president, secretary and actuary are not any of them within this state.

GEO. H. DURHAM.

Subscribed and sworn to before me this first day of November, 1897.

[Seal]

RALPH W. EMMONS,

Notary Public in and for the State of Washington.

State of Washington, }  
County of King. } ss.

Due service of the within petition is hereby accepted in King County, Washington, this 1st day of Nov., 1897, by receiving a copy thereof duly certified to as such by Geo. H. Durham, one of the attorneys for defendant.

McCUTCHEON & GILLIAM, and  
PRESTON, CARR & GILMAN,  
Attorneys for Plaintiff.

Filed Nov. 1, 1897. Geo. M. Holloway, Clerk.



*In the Superior Court of the State of Washington, for the  
County of King.*

FRANK E. DINGLEY, as Administra-  
tor of the Estate of Walter Frederick  
Dingley, Deceased,

Plaintiff,

vs.

THE NEW YORK LIFE INSURANCE  
COMPANY,

Defendant.

**Bond on Removal.**

Know All Men by These Presents, that the New York Life Insurance Company, a corporation organized and existing under and by virtue of the laws of the State of

New York, defendant herein, as principal, and James Shannon, as surety, are holden and stand firmly bound unto the plaintiff herein in the penal sum of five hundred dollars, for the payment whereof well and truly to be made unto the said plaintiff, his heirs, representatives, successors and assigns, we bind ourselves our heirs, successors, representatives and assigns, jointly and severally firmly by these presents, upon the condition, nevertheless,

That whereas, the said New York Life Insurance Company has petitioned the Superior Court of the State of Washington for the County of King for the removal of a certain cause therein pending, wherein the plaintiff above named is plaintiff, and the said New York Life Insurance Company is defendant, to the Circuit Court of the United States for the District of Washington, Northern Division;

Now, if the New York Life Insurance Company shall enter in the said Circuit Court of the United States for the District of Washington, Northern Division, on the first day of its next session, a copy of the record in said action, and shall well and truly pay all costs that may be awarded by said Circuit Court of the United States for the said District of Washington, Northern Division, if said Court shall hold that said suit was wrongful or improperly removed, then this obligation shall be void; otherwise it shall remain in full force and virtue.

In witness whereof, the said New York Life Insurance Company and James Shannon have hereunto set their names and seals this 2nd day of November, 1897.

NEW YORK LIFE INSURANCE COMPANY, [Seal]

By GEO. H. DURHAM,

Its Agent and Attorney.

JAMES SHANNON. [Seal]

State of Washington, )  
County of King,        )  
City of Seattle.        ) ss.

I, James Shannon, being first duly sworn, depose and say, that I reside in the city of Seattle, county of King, and State of Washington, and am a freeholder therein, and worth the sum of one thousand dollars over and above all my debts and liabilities and property exempt from execution, and am not an attorney or counselor at law, sheriff, clerk, or other officer of any court within the State of Washington.

JAMES SHANNON.

Subscribed and sworn to before me this 1st day of November, 1897.

[Seal]

RALPH W. EMMONS,

Notary Public in and for the State of Washington, residing in the City of Seattle.

State of Washington, )  
County of King,        )  
                                  ) ss.

Due service of the within bond is hereby accepted in King County, Washington, this 1st day of Nov., 1897, by

receiving a copy thereof duly certified to as such by Geo. H. Durham, one of the attorneys for defendant.

McCUTCHEON & GILLIAM,  
PRESTON, CARR & GILMAN,  
Attorneys for Plaintiff.

Filed Nov. 1, 1897. Geo. M. Holloway, Clerk.

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*In the Superior Court of the State of Washington, for the  
County of King.*

FRANK E. DINGLEY, as Administrator  
of the Estate of Walter Frederick  
Dingley, Deceased,

Plaintiff,

vs.

THE NEW YORK LIFE INSURANCE  
COMPANY,

Defendant.

### Order of Removal.

Now at this time this cause coming on to be heard on motion of the defendant for an order of removal herein to the Circuit Court of the United States for the District of Washington, Northern Division, as provided by law; and the said defendant having filed herein its petition as required by law, and its bond upon removal as required by law, which bond has by this Court been approved;

Now, therefore, the Court being fully advised, said pe-

tition is granted and further proceedings in said cause in this court are hereby stayed, and the clerk of this court is hereby directed and required upon the payment of his proper fees therefor and upon request of petitioner to prepare and certify as required by law, and to deliver to said defendant, petitioner, to be filed in the Circuit Court of the United States for the District of Washington, Northern Division, a full and complete copy of the record herein.

November 1st, 1897.

E. D. BENSON,  
Judge.

Filed Nov. 1, 1897. Geo. M. Holloway, Clerk.

State of Washington, }  
County of King,        } ss.

I, Geo. M. Holloway, county clerk of King County and ex-officio clerk of the Superior Court of the State of Washington, for the county of King, do hereby certify that the foregoing is a true and correct transcript of the entire record in cause No. 24,568, as the same appears on file and of record in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court this 13th day of November, A. D. 1897.

[Seal Superior Ct., King Co.]

GEO. M. HOLLOWAY,  
Clerk.

By John Wallace,  
Deputy.

[Endorsed]: Transcript. Filed Nov. 29, 1897. In the U. S. Circuit Court. A. Reeves Ayres, Clerk. By A. N. Moore, Deputy.

*In the Circuit Court of the United States, for the District of Washington, Northern Division.*

FRANK E. DINGLEY, as Administrator of the Estate of Walter Frederick Dingley, Deceased,

Plaintiff,

vs.

THE NEW YORK LIFE INSURANCE COMPANY,

Defendant.

No. 647.

**Answer.**

The above-named defendant, for answer to plaintiff's complaint in the above-entitled action, admits, denies, and alleges as follows:

Admits that said defendant was at the times mentioned in said complaint and is a corporation, duly incorporated, organized, and existing under and by virtue of the laws of the State of New York, and with corporate power to carry on a life insurance business, and that its home office and principal place of business was and is at the city of New York in said State of New York, and that at all the



times in the complaint mentioned it was and now is duly authorized to do business in the State of Washington.

Denies that on the third day of August, 1894, or at any time, in consideration of the sum of \$158.00, or any sum, then or at any time paid it by the said Walter Frederick Dingley, or for or upon any consideration, or at all, said defendant made, executed, issued, or delivered to the said Walter Frederick Dingley, either under the name of Walter F. Dingley or otherwise, at the city of New York, in the State of New York, or elsewhere, a certain or any policy or contract of insurance in writing, or otherwise, numbered 628,645, or any other number, or as set forth in said complaint, or otherwise, or any contract or policy of insurance, or any contract or policy, or whereby defendant insured the life of Walter Frederick Dingley, or anyone, for the benefit of insured's executors, administrators, or assigns, or otherwise, in the sum of \$5,000, or any sum, or at all; and denies that the said Walter Frederick Dingley ever paid defendant \$158.00, or any sum or any consideration, or that defendant ever made, executed, or delivered to him any contract or policy of insurance whatever, and denies that defendant ever made, issued, or delivered any contract of insurance concerning, or made, issued, or delivered any policy of insurance upon the life of Walter Frederick Dingley for any sum, saving and excepting only that certain policy of insurance hereinafter alleged; and denies that defendant's policy of insurance No. 628,645 was ever delivered to said Walter Frederick Dingley, or was ever delivered to anyone, or at any place, excepting as hereinafter alleged, or was ever delivered in the city or

state of New York; and denies that Walter Frederick Dingley paid \$158.00 or any sum, or any consideration for said policy of insurance No. 628,645, which was made and delivered by defendant as hereinafter alleged and not otherwise, or that Walter Frederick Dingley ever paid any premium or premiums upon or consideration for said policy of insurance.

Denies that said defendant in or by any contract ever made with plaintiff's intestate agreed to pay said intestate or plaintiff or anyone upon receipt of proofs of the death of Walter Frederick Dingley, or otherwise, or at all, the sum of \$5,000, or any sum; and denies that defendant ever made any contract whereby it agreed to pay to the insured's executors, administrators, or assigns \$5,000, or any sum, saving and excepting only that contract of insurance hereinafter set forth and alleged, and which was made as hereinafter alleged, and not otherwise.

Denies that any policy of insurance or contract ever made by defendant to said Walter Frederick Dingley, or between said Walter Frederick Dingley and defendant, was or is in words and figures, or words or figures set forth in said complaint, or otherwise; and denies that defendant ever made with said Walter Frederick Dingley the pretended contract or policy of insurance set out in said complaint.

Denies any knowledge or information sufficient to form a belief as to whether or not on the twelfth day of November, 1896, or at any time, Walter Frederick Dingley, mentioned in the said complaint, died at the city of Seattle, county of King, or in the State of Washington, or else-

where, or as to whether or not said Walter Frederick Dingley ever died or is dead.

Denies any knowledge or information sufficient to form a belief as to whether or not plaintiff was, on the fifth day of December, 1896, or at any time, duly or otherwise appointed administrator of the estate of Walter Frederick Dingley, deceased, by the Superior Court of the County of King, State of Washington, or as to whether or not thereafter plaintiff duly qualified or qualified at all as such administrator, or as to whether letters of administration were duly or at all issued by said Superior Court to the said plaintiff on the 5th day of December, 1896, or at any other date, or as to whether said letters have never been revoked, or as to whether or not the said plaintiff is now the duly appointed, qualified, or acting administrator of the estate of Walter Frederick Dingley, deceased, or as to whether or not plaintiff's intestate is the person named in the pretended contract or policy of insurance set out in said complaint, or as to whether or not Walter Frederick Dingley in the complaint mentioned is the person named in the policy of insurance hereinafter mentioned, and which was by said defendant as hereinafter alleged and not otherwise issued upon the life of one Walter Frederick Dingley.

Denies that during the lifetime of said Walter Frederick Dingley, or at any time or at all, said Walter Frederick Dingley or plaintiff duly or at all performed all or any of the conditions of the policy of insurance set out in said complaint or the policy of insurance hereinafter alleged; and denies that any person ever performed all or any or either of the conditions of said policy of insurance.

Admits that plaintiff furnished to the defendant certain alleged proofs of death of said Walter Frederick Dingley, but denies that they were received or accepted by the said defendant as satisfactory or sufficient.

Admits that said defendant has not paid the policy of insurance set forth in said complaint, or any part thereof, and that it has denied all or any liability under said alleged policy; denies that there is now due or owing to the plaintiff or anyone from said defendant upon said alleged policy in the complaint set forth, or upon any policy or at all, the sum of \$5,000 or any sum whatever, with interest at the rate of seven or any rate per cent per annum from the fifth day of April, 1897, or from any other day or time.

Admits that said defendant declared and claimed, and now alleges the fact to be, that said policy of insurance set out in the said complaint has been and was prior to the alleged death of said Walter Frederick Dingley, and is lapsed, forfeited, and canceled for the nonpayment of premiums therein mentioned and thereby required to be paid, and that the said alleged policy or contract was and is of no validity or value; and denies that any such policy or contract of insurance exists.

Further answering plaintiff's said complaint, and as a further and separate defense thereto, said defendant alleges:

That on or about the 19th day of July, 1894, Walter Frederick Dingley, in said complaint mentioned, then being a resident of and at Oakland, Alameda County, California, applied to the defendant at San Francisco, in said State of California through its agent in said last named

State, for a policy of insurance of \$5,000 on his life, and in order to induce said defendant to insure his life for said amount and issue him a policy of insurance therefor, made, signed, and delivered to plaintiff's intestate at San Francisco a certain written application for said insurance, which said written application defendant will produce upon the trial of this action; that said defendant accepted said application for insurance, and pursuant to the terms thereof made and signed and delivered to said Walter Frederick Dingley at said San Francisco, in the State of California, a certain written policy of insurance, dated the third day of August, 1894, and numbered 628,645, a substantial copy whereof is set out in plaintiff's complaint, and which is the same contract of insurance and policy of insurance mentioned in said complaint and therein pretended to have been made by said Walter Frederick Dingley and defendant, and which said policy of insurance was received and accepted, and each one and all of the terms and conditions thereof agreed to by the said Walter Frederick Dingley, at Oakland, California, whereby a contract of insurance, being the same contract of insurance set forth and mentioned in said complaint, was made and entered into between said Walter Frederick Dingley and defendant.

That it is provided and stipulated in and by said policy of insurance, among other things, and the said contract was made in consideration of the written application for said policy and of the agreements, statements, and warranties thereof, which were made and are a part of said contract, and in further consideration of the sum of

\$158.00, to be paid in advance, and of the payment of a like sum on the 19th day of July in every year thereafter, to be paid in advance, during the continuance of said policy, until twenty years' full premiums should have been paid, that the said policy shall only be valid and remain in force on the condition that there is paid to the said defendant on or before the 19th day of July in every year thereafter during the continuance of said policy, and until twenty full years' premiums shall have been paid, the sum of \$158.00. as the annual premium or consideration for such insurance.

Defendant alleges that on the ninth day of April, 1895, the said Walter Frederick Dingley, under the name of W. F. Dingley, notified this defendant's San Francisco agent, Alex G. Hawes, of the fact that he was insured in the defendant company in the sum of \$5,000, by policy No. 628,645, and that when said policy was written his address was Oakland, Alameda County, California; that at the date of said communication he resided at Seattle, Washington, at which place he requested that notices of his premiums should be sent.

That during all of the times in the complaint and in this answer mentioned defendant had an agent in the said State of Washington, to whom the premiums upon said policy of insurance were payable and to whom the same might be paid; that an annual premium of \$158.00 fell due and became payable to defendant under and by the terms of said policy on the 19th day of July, 1896, and that said premium was not, nor was any part thereof, ever paid, but that said Walter Frederick Dingley wholly failed and neglected to pay the same, and made default

in the payment thereof and abandoned said insurance, whereby, pursuant to the terms thereof, as aforesaid, said policy of insurance became void and canceled, and said insurance lapsed and was wholly ended and terminated.

For another further and separate answer and defense to plaintiff's said complaint said defendant alleges:

That on or about the nineteenth day of July, 1894, Walter Frederick Dingley, in said complaint mentioned, being a resident of Oakland, Alameda County, in the State of California, at San Francisco, in said State, applied to defendant through its agent in the State of California for a policy of insurance for \$5,000 upon his life; that defendant accepted said application for insurance, and pursuant thereto, made, issued, and delivered to said Walter Frederick Dingley, who accepted and received the same, a certain written policy of insurance, dated the third day of August, 1894, and numbered 628,645, and being the same policy of insurance set out in plaintiff's complaint and therein alleged to have been made between Walter Frederick Dingley and defendant; that said policy of insurance and the existence thereof and said insurance and the existence thereof were conditioned and predicated upon the payment to defendant by the insured of the sum of \$158.00 annual premium, payable in advance on or before the 19th day of July in every year during the life of said policy, and said policy contains this stipulation:

"This contract is made in consideration of the written application for this policy, and of the agreements, statements and warranties thereof, which are hereby made a

part of this contract, and in further consideration of the sum of one hundred and fifty-eight dollars and — cents, to be paid in advance, and of the payment of a like sum on the 19th day of July in every year thereafter during the continuance of this policy, until twenty full years' premium shall have been paid."

That an annual premium of \$158.00 fell due and became payable to defendant under and by the terms of said policy of insurance on the 19th day of July, 1896.

That the laws of the State of New York relating to insurance, in force at the time of said contract of insurance was entered into, as aforesaid, between defendant and said Walter Frederick Dingley, and at the time said policy of insurance herein mentioned and set out in said complaint was issued and delivered to said Walter Frederick Dingley, as aforesaid, and in and during the year 1894 and thence forward, which laws are found in chapter 690, article 1, section 92 of the laws of the State of New York of 1892, provide:

"No Forfeiture of Policy Without Notice.—No life insurance corporation doing business in this State shall declare forfeited, or lapsed, any policy hereafter issued or renewed, and not issued upon the payment of monthly or weekly premiums, or unless the same is a term insurance contract for one year or less, nor shall any such policy be forfeited or lapsed, by reason of nonpayment when due of any premium, interest or installment or any portion thereof required by the terms of the policy to be paid, unless a written or printed notice stating the amount of such premium, interest, installment or portion thereof, due on such policy, the place where



it should be paid, and the person to whom the same is payable, shall be duly addressed and mailed to the person whose life is insured, or the assignee of the policy, if notice of the assignment has been given to the corporation, at his or her last known postoffice address, postage paid by the corporation, or by an officer thereof, or person appointed by it to collect such premium, at least fifteen and not more than forty-five days prior to the day when the same is payable.

“The notice shall also state that unless such premium, interest, installment, or portion thereof, then due, shall be paid to the corporation, or to a duly appointed agent or person authorized to collect such premium by or before the day it falls due, the policy and all payments thereon will become forfeited and void except as to the right to a surrender value or paid-up policy as in this chapter provided.

“If the payment demanded by such notice shall be made within its time limited therefor, it shall be taken to be in full compliance with the requirements of the policy in respect to the time of such payment; and no such policy shall in any case be forfeited or declared forfeited or lapsed until the expiration of thirty days after the mailing of such notice.

“The affidavit of any officer, clerk, or agent of the corporation, or of any one authorized to mail such notice, that the notice required by this section, has been duly addressed and mailed by the corporation issuing such policy, shall be presumptive evidence that such notice has been duly given.”

That, subsequent to the issuance of said policy by de-

endant, the said Walter Frederick Dingley removed his residence from Oakland, California, to Seattle, in the State of Washington, and continued to reside there up to the time of his alleged death, charged to have occurred November 12, 1896; that sometime after the said Walter Frederick Dingley so removed from Oakland, California, to Seattle, Washington, he informed the defendant of said change of residence, and requested that notices of his premium thereafter be sent to him at Seattle in said State of Washington.

That on the ninth day of April, 1895, the said Walter Frederick Dingley, over the signature of W. F. Dingley, addressed to Alex G. Hawes, the San Francisco agent of this company, through whom the said Dingley had procured his said policy of insurance, a letter, of which the following is a copy:

“W. F. Dingley, Commission.

“Seattle, Washn., April 9th, 1895.

“Alex. G. Hawes, Esq., San Francisco, Calif.

“Dear Sir: I am insured in the New York Life Ins. Co. of N. Y. under policy No. 628,645 for \$5,000.00. When this policy was written my address was Oakland, Alameda Co., Calif. I now reside at Seattle, Wash., and so advise you that you can notify me when my premiums become due which I would thank you to do at an early date.

Yours truly,

(Signed) “W. F. DINGLEY,

“Seattle, Wash., P. O. Box No. 1272.”

That on the                    day of                    , 1896, said defendant duly mailed to said Walter Frederick Dingley, at his address as furnished by him at Seattle, Washing-

ton, a written and printed notice, stating the amount of the said annual premium due and payable to defendant on said policy of insurance on the 19th day of July, 1896, the place where the same should be paid and the person to whom the same was payable, which said written and printed notice was duly sealed up in an envelope duly addressed to the said Walter Frederick Dingley as aforesaid, to-wit, at Seattle, Washington, and postage thereon duly paid by said defendant, and said notice duly stated that unless said premium was paid the said policy of insurance would become void; that said notice was so sent not less than fifteen nor more than forty-five days prior to the date when said premium became and was payable; that the said defendant in all respects fully complied with the said law of the State of New York in reference to notice of premiums.

That an affidavit of the making and mailing of said notice by an employee of the defendant authorized to mail the same to the effect that the notice required by the said law of the state of New York, above set forth, had been duly addressed and mailed by the defendant corporation issuing such policy, was duly made and filed in the archives of the defendant corporation; that defendant will produce at the trial the said affidavit and a copy of said notice so given by defendant and received by the said Walter Frederick Dingley.

That said annual premium of \$158.00, which became due and payable to defendant by the terms of said policy of insurance on the 19th day of July, 1896, as aforesaid was not, nor was any part thereof ever paid, but that

said Walter Frederick Dingley wholly made default in the payment thereof, and that thereupon, pursuant to the terms and conditions of said policy and the provisions of the said laws of the State of New York and said notice so duly given as aforesaid by defendant to said Walter Frederick Dingley, as required by said laws of the State of New York, said policy of insurance became wholly void canceled, and of no effect, and said insurance lapsed, ended, and terminated; that said Walter Frederick Dingley and plaintiff wholly failed and neglected to surrender or receipt said policy of insurance.

Wherefore, said defendant prays that plaintiff take nothing by this action; that his complaint be dismissed, and that defendant recover from plaintiff its costs and disbursements herein.

GEO. H. DURHAM,  
Attorney for Defendant.

United States of America, }  
District of Oregon. } ss.

I, George H. Durham, being duly sworn, depose and say that I am the attorney of the defendant corporation; that its home office and principal place of business is in New York City, in the State of New York, where its president, vice-president, secretary and actuary reside and are; that none of such officers are residents of or are within the State of Washington or the State of Oregon, for which reason I make this verification; that the foregoing answer is true, as I verily believe.

GEO. H. DURHAM.

Subscribed and sworn to before me this twenty-sixth day of November, 1897.

[Notarial Seal]

ROBERT T. PLATT,  
Notary Public for Oregon.

State of Washington, }  
County of King.        } ss.

I, L. D. Sayres, being first duly sworn, depose and say, that I am the statutory agent and attorney in fact of the defendant corporation (within the State of Washington) named in the above-entitled action, and that the foregoing answer is true, as I verily believe; that said defendant corporation is a nonresident and foreign corporation, and its president, vice-president, secretary and actuary are nonresidents of Washington, and not within this State, for which reason I make this affidavit.

L. D. SAYRES.

Subscribed and sworn to before me this 29th day of November, 1897.

[Notarial Seal]

FRANK I. CURTIS,  
Notary Public for the State of Washington.

State of Washington, }  
County of King.        } ss.

Due service of the within answer is hereby accepted, in King County, Washington, this            day of            , 189—, by receiving a copy thereof duly certified to as

such, by Geo. H. Durham, one of the attorneys for defendant, taking 20 days to plead hereto.

McCUTCHEON & GILLIAM, and  
PRESTON, CARR & GILMAN,  
Of Attorneys for Plaintiff.

[Endorsed]: Answer. Filed, Nov. 29, 1897. A. Reeves Ayres, Clerk. By A. N. Moore, Deputy.

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*United States Circuit Court, for the District of Washington.*

FRANK E. DINGLEY, Admr.,	}	No. 647.
Plaintiff,		
vs.		
THE NEW YORK LIFE INS. CO.,	}	
Defendant.		

### **Praecipe for Appearance.**

To the Clerk of the above-entitled court:

You will please enter my appearance as attorney for defendant in the above-entitled cause.

GEO. H. DURHAM,  
Attorney for Deft.

[Endorsed]: Praecipe for appearance. Filed Dec. 3, 1897. A. Reeves Ayres, Clerk. A. N. Moore, Deputy Clerk.

*In the Circuit Court of the United States, for the District of Washington, Northern Division.*

FRANK E. DINGLEY, as Administrator of the Estate of Walter Frederick Dingley, Deceased,

Plaintiff,

vs.

THE NEW YORK LIFE INSURANCE COMPANY,

Defendant.

No. 647.

**Reply to Answer.**

Comes now the plaintiff, by his attorneys, and for reply to the affirmative matter contained in the defendant's answer and pleaded as a further and separate defense to the complaint:

I.

Admits that on or about the 19th day of July, 1894, Walter Frederick Dingley, being the person so named in the complaint herein, and then being a resident of the city of Oakland, in Alameda County, California, applied to the defendant for a policy of insurance of five thousand dollars on his life; admits that pursuant to such application the defendant made, executed, and delivered to the said Walter Frederick Dingley, at the city of New York, in the State of New York, a certain written policy of insurance, dated the 3rd day of August, 1894, and numbered 628,645, a copy of which

is set out in the complaint herein, and that said policy of insurance was received and accepted by the said Walter Frederick Dingley, and thereby the contract of insurance set forth in the complaint was made and entered into between the said Walter Frederick Dingley and the defendant; admits that it is provided and stipulated by said policy of insurance, among other things, that the said contract was made in consideration of \$158 then paid by the insured to the defendant, and of the written application for said policy and of the agreements, statements, and warranties thereof, which were and are a part of said contract.

Referring to the allegation that on the 9th day of April, 1895, the said Walter Frederick Dingley, under the name of W. F. Dingley, notified the defendant's San Francisco agent, one Alex G. Hawes, of the fact that he was insured in the defendant company in the sum of five thousand dollars by policy No. 628,645, and that when said policy was written his address was Oakland, Alameda County, California, and that at the date of said communication he resided at Seattle, Washington, at which place he requested that notice of his premium should be sent, the plaintiff denies that he has any knowledge or information sufficient to enable him to form a belief as to any part of said allegation.

Referring to the further allegation therein that during all of the times in the complaint mentioned the defendant had an agent in the State of Washington to whom premiums upon said policy of insurance were payable and to whom the same might be paid, the plaintiff de-



nies that he has any knowledge or information sufficient to enable him to form a belief as to any part of said allegation.

Referring to the further allegation therein that the annual premium of \$158 payable by the terms of said policy on the 19th day of July, 1896, has never been paid, plaintiff denies that he has any knowledge or information sufficient to enable him to form a belief as to any part of said allegation. Plaintiff specifically denies that the annual premium therein referred to became due at any time prior to the 19th day of August, 1896.

Referring to the further allegation therein that said Walter Frederick Dingley wholly failed and neglected to pay said annual premium, and made default in the payment thereof, and abandoned said insurance, whereby, pursuant to the terms thereof as aforesaid, said policy of insurance became void and canceled and said insurance lapsed, and was wholly ended and terminated, said plaintiff denies each and every part of the whole thereof.

Plaintiff denies each and every allegation made or contained in said further and separate defense, save such thereof as he has hereinbefore expressly admitted.

Replying to the second further and separate answer and defense contained in said answer, and therein denominated "another and further separate answer and defense to plaintiff's complaint":

I.

Plaintiff admits that on or about the 19th day of July, 1894, Walter Frederick Dingley, being the person so named in the complaint herein, and being then a resi-

dent of the city of Oakland, in the State of California, applied to the defendant for a policy of insurance for five thousand dollars upon his life; that pursuant to said application the defendant issued and delivered to the said Walter Frederick Dingley, who accepted and received the same, the policy of insurance dated the 3rd day of August, 1894, and numbered 628,645, which is set forth in the plaintiff's complaint. Admits that said policy contains the following stipulation: "This contract is made in consideration of the written application for this policy, and of the agreements, statements, and warranties, thereof, which are hereby made a part of this contract, and in further consideration of the sum of one hundred and fifty-eight and        cents, to be paid in advance, and of the payment of a like sum on the 19th day of July in each year thereafter during the continuance of this policy, until twenty full years' premiums shall have been paid." Admits that an annual premium of \$158 fell due and became payable to the defendant under and by the terms of said policy of insurance on the 19th day of August, 1896; but denies that the annual premium referred to in said second affirmative defense as falling due on the 19th day of July, 1896, fell due on that day or any day prior to the 19th day of August, 1896. Admits that section 92 of chapter 690 of the Laws of the State of New York is as set forth in the said answer, and that section 92 was in force during said year 1894 and thenceforward; admits that subsequent to the issuance of said policy by the defendant the said Walter Frederick Dingley removed his residence from Oakland, California, to Seattle, Washington, and continued to reside in Seattle

up to the time of his death, which occurred on November 12th, 1896. He denies that the said Walter Frederick Dingley ever made default in the payment of any premium provided by said policy, and he denies that the said policy of insurance became void by reason of notice given, or for any reason whatever; he denies that said policy of insurance ever was canceled, and denies that said policy of insurance ever became of no effect, and denies that the said insurance either lapsed, ended or terminated at any time whatsoever. He admits that neither the said Walter Frederick Dingley nor the plaintiff ever surrendered or receipted said policy of insurance.

Referring to each and every of the other allegations of the said second further and separate answer and defense than those he has hereinbefore expressly admitted or expressly denied, the plaintiff denies that he has any knowledge or information as to the same or any of them sufficient to enable him to form a belief as to the same or any of them.

And for a further affirmative reply to the second further answer and defense set forth in the said answer and therein denominated "another further and separate answer and defense," the plaintiff alleges:

That in the year 1896, subsequent to the 19th day of August, of said year, the defendant waived any default, if any such default had occurred, on the part of the insured in the payment of premiums, or in any other respect, payable under the terms of the contract of insurance referred to in the complaint and answer, and at said time recognized the contract of insurance set forth

in the complaint and answer as a valid existing contract of insurance, and thereby in the lifetime of the said Walter Frederick Dingley agreed with him, the said Walter Frederick Dingley, that the time for the payment of the annual premium upon said policy falling due August 19th, 1896, should be and was extended, and thereby further agreed with the said Walter Frederick Dingley, in his lifetime, that he, the said Walter Frederick Dingley, might thereafter at any time within the year 1896 make payment of the premium falling due as aforesaid in the year 1896, and by reason of said waiver and agreement, and relying upon the same, the said annual premium was unpaid at the time of the death of the said Walter Frederick Dingley, which occurred November 12th, 1896; and by reason of the facts aforesaid the defendant estopped itself, and is now estopped, and ought not to be heard to allege that the said policy of insurance became lapsed, forfeited or void by reason of the nonpayment of the said premium.

Wherefore, the plaintiff prays as in his original complaint.

McCUTCHEON & GILLIAM, and  
 PRESTON, CARR & GILMAN,  
 Attorneys for Plaintiff.

United States of America, }  
 District of Washington. } ss.

Frank E. Dingley, being duly sworn, deposes and says, that he is plaintiff in the foregoing answer named; that

he has read the same, and knows the contents thereof, and that the same is true to his own knowledge.

FRANK E. DINGLEY,

Subscribed and sworn to before me this 28th day of June, 1898.

JAMES MURPHY,

Notary Public in and for the State of Washington, Residing at Seattle.

Received copy of the within reply and service of the same admitted this 29 day of June, 1898.

GEO. H. DURHAM, and

R. W. EMMONS,

Attys. for Defendant.

[Endorsed]: Reply to answer. Filed this 29 day of June, 1898. A. Reeves Ayres, Clerk. By A. N. Moore, Deputy.

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Thursday, June 30, 1898.

Circuit Court Journal, volume 2, page 380.

FRANK E. DINGLEY,

vs.

THE NEW YORK LIFE INS. CO.

} No. 647.

### Trial

Now, on this 30th day of June, 1898, this cause comes on regularly for trial, in open court, plaintiff being present by Messrs. Preston & Gilman, and the defendant

present by Geo. H. Durham, Esq., a jury being called, come and answer to their names as follows:

\* \* \* \* \*  
 twelve good and lawful men duly impaneled and sworn.

And now the hour of adjournment having arrived, by consent of parties it is ordered by the Court that this cause be, and is hereby, continued until ten o'clock to-morrow morning, the 1st day of July, 1898; and the Court, having cautioned the jury in this cause, they are allowed to separate until that hour.

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Friday, July 1, 1898.

Circuit Court Journal, volume 2, page 381.

F. E. DINGLEY,

vs.

THE NEW YORK LIFE INS. CO.

} No. 647.

### **Trial (Continued.)**

And now the hour of 10 o'clock A. M. having arrived, the plaintiff present by Messrs. Preston & Gilman, and the defendant present by Geo. H. Durham, Esq., the jury being called all answer to their names, all being present in their box, this cause proceeds by the examination of witnesses on the part of plaintiff until the close thereof, at which time the defendant, through its counsel, moves for nonsuit, which motion is by the Court denied, and this cause proceeds by the introduction of evidence on behalf of defendant until the close thereof, at which time plaintiff moves the Court to direct the jury to return a

verdict for the plaintiff, which motion is by the Court granted, and the jury, without leaving their box, return the following verdict: "We, the jury in the above-entitled action, do find for the plaintiff, and assess his damages at the sum of five thousand one hundred and ninety dollars (\$5,190.00); this finding is in pursuance of express instructions from the Court. Wm. L. Beach, Foreman."

Whereupon the jury are duly discharged from the cause.

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*In the Circuit Court of the United States, for the District of  
Washington, Northern Division.*

FRANK E. DINGLEY, as Adminis- trator of the Estate of Walter Fred- erick Dingley, Deceased	} No. 647.
Plaintiff,	
vs.	
THE NEW YORK LIFE INSURANCE COMPANY,	} No. 647.
Defendant.	

**Verdict.**

We, the jury in the above-entitled action, do find for the plaintiff and assess his damages at the sum of five thousand one hundred and ninety dollars (\$5,190.00); this finding is in pursuance of express instructions from the Court.

WM. L. BEACH, Foreman.

[Endorsed]: Verdict. Filed July 1, 1898. In the U. S. Circuit Court. A. Reeves Ayres, Clerk. By H. M. Walthew, Deputy.

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Friday, July 1, 1898.

General Order Book, Circuit Court, volume 5.

FRANK E. DINGLEY, as Adminis-  
trator etc.,

vs.

NEW YORK LIFE INS. CO.

} No. 647.

### **Order Extending Time to File Bill of Exceptions.**

Now, on this day, it is ordered by the Court that the defendant herein be, and it is hereby, allowed thirty days from this date in which to file a motion for a new trial and file and settle the bill of exceptions in the above-entitled cause.



*In the Circuit Court of the United States, for the District of  
Washington, Northern Division.*

FRANK E. DINGLEY, as Adminis-  
trator of the Estate of Walter Fred-  
erick Dingley, Deceased,

Plaintiff,

vs.

THE NEW YORK LIFE INSURANCE  
COMPANY,

Defendant.

No. 647.

### Judgment.

This cause coming on duly and regularly to be heard the first day of July, A. D. 1898, plaintiff appearing by his attorneys, McCutcheon & Gilliam and Preston, Carr & Gilman, and the defendant appearing by its attorneys, George H. Durham and Emmons & Emmons, a jury of twelve good and lawful men was duly called, impaneled and sworn and tried the case; whereupon evidence was introduced by plaintiff to sustain the issues on its part, and by the defendant to sustain the issues on its part, and at the conclusion of the evidence the jury, under the direction of the Court, returned the following verdict:

“We, the jury in the above-entitled action, do find for the plaintiff, and assess his damages at the sum of five thousand one hundred and ninety dollars (5,190.00). This,

finding is in pursuance of express instructions from the Court.

“WILLIAM L. BEACH, Foreman.”

And now on this 7th day of July, A. D. 1898, plaintiff moves for judgment upon said verdict, and the court being now fully advised in the premises grants said motion;

Wherefore, it is ordered and adjudged that the plaintiff, Frank E. Dingley, as administrator of the estate of Walter Frederick Dingley, deceased, do have and recover of and from the defendant, The New York Life Insurance Company, the sum of \$5,190.00, with interest thereon from the date hereof at the rate of seven per cent per annum, together with the costs of this action taxed at \$ , and that execution issue therefor.

Done in open court, this 7th day of July, A. D. 1898.

C. H. HANFORD, Judge.

[Endorsed]: Judgment. Filed this 7 day of July, 1898.  
A. Reeves Ayres, Clerk. By A. N. Moore, Deputy.

*In the Circuit Court of the United States, for the District of Washington, Northern Division.*

FRANK E. DINGLEY, as Adminis- trator of the Estate of Walter Fred- erick Dingley, Deceased,  vs.  NEW YORK LIFE INSURANCE COMPANY,	}	Plaintiff,        Defendant.
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**Motion for New Trial.**

Now comes the defendant, by its attorneys, and moves the Court to vacate the verdict and judgment thereon rendered herein in favor of the plaintiff and against this defendant, and to grant defendant a new trial of this cause for the following reasons materially affecting the substantial rights of this defendant:

First.—Insufficiency of the evidence to justify the verdict, and that said verdict is against law;

Second.—Error in law occurring at the trial, and exception to at the time by the defendant.

GEO. H. DURHAM, and  
R. W. EMMONS,  
Attorneys for Defendant.

District and State of Washington, }  
County of King. } ss.

Due service of the within motion for new trial is hereby accepted in Seattle, Dist. Washington, this day

of July, 1898, by receiving a copy thereof duly certified to as such by Geo. H. Durham, one of the attorneys for defendant.

PRESTON, CARR & GILMAN,

Of Attorneys for Plaintiff.

[Endorsed]: Motion for new trial. Filed Jul. 20, 1898.  
A. Reeves Ayres, Clerk. By H. M. Walthew, Deputy.

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*In the Circuit Court of the United States, for the District of  
Washington, Northern Division.*

FRANK E. DINGLEY, Admr., etc.,

vs.

NEW YORK LIFE INSURANCE  
COMPANY.

### Order Denying Motion for New Trial.

This cause coming on duly and regularly to be heard upon defendant's motion for a new trial, and the Court being now fully advised in the premises, denies said motion. To which ruling of the Court denying said motion defendant by its counsel excepts and its exception is allowed by the Court.

Done at Chambers this 25th day of July, A. D. 1898.

C. H. HANFORD, Judge.

[Endorsed]: Order denying motion for new trial. Filed July 25, 1898. In the U. S. Circuit Court. A. Reeves Ayres, Clerk. By A. N. Moore, Deputy.

*In the Circuit Court of the United States for the District of  
Washington, Northern Division.*

FRANK E. DINGLEY, as Adminis-  
trator of the Estate of Walter Fred-  
erick Dingley, Deceased,

Plaintiff,

vs.

NEW YORK LIFE INSURANCE COM-  
PANY

Defendant.

### **Defendant's Bill of Exceptions.**

Be it remembered, that on the 30th day of June and the first day of July, in the year 1898, at a stated term of the said court, begun and holden in Seattle in and for the Northern District of Washington, before the Hon. C. H. Hanford, District Judge, the issues in the above-entitled cause between the said parties, as set forth in the pleadings, came on to be tried before the said Judge and a jury regularly impaneled and sworn to try said cause, the plaintiff being represented by Messrs. Preston, Carr & Gilman and McCutcheon & Gilliam, his attorneys, and the defendant by Messrs. George H. Durham and R. W. Emmons, its attorneys; and upon the trial of said issues the attorneys of the said plaintiff, to maintain and prove the said issue on his part offered in evidence the original policy of insurance issued by the defendant company upon the life of the said Walter Fred-

erick Dingley, numbered 628,645, set forth at large in plaintiff's complaint in this case, and a copy of which said policy is appended hereto, marked "Plaintiff's Exhibit 1," and made part hereof; and offered in evidence proof of the death of said Walter Frederick Dingley, together with evidence showing that proofs of such death were duly made and presented to the defendant company.

Plaintiff also offered in evidence exemplified copies of the records of the Superior Court of the State of Washington for King County, showing the appointment of plaintiff as administrator of the estate of said Walter Frederick Dingley, deceased, with exemplified copies of plaintiff's bond and oath as such administrator. Plaintiff also offered and read in evidence two premium receipts, which are attached hereto as part hereof, marked respectively Plaintiff's Exhibits "AA" and "BB."

Thereupon plaintiff rested his case.

And thereupon the said defendant, to maintain and prove the said issues on its part, offered and read in evidence a deposition of Charles C. Whitney, secretary of the defendant corporation, taken in pursuance of a stipulation of the parties, which provided that the said deposition might be taken and read in evidence by either party without objection to form of interrogatories, but subject only to such objections for competency, relevancy, and materiality as might have been taken had the witness been personally present before the court.

Said witness, among other things, testified that he was secretary of the defendant company; that he had been in its employ for over twenty-one years; that he produced the original application made by the said Walter F.

Dingley for insurance in the defendant company, which original application was offered and read in evidence as Defendant's Exhibit "A," plaintiff's counsel admitting the signature thereto to be the genuine signature of such Walter F. Dingley, a copy of which application is hereto attached and made a part of this bill of exceptions, said application being material to show the postoffice address of the deceased at the time said policy of insurance was granted him, namely, Oakland, Alameda County, California.

Said witness also produced an original letter received at the home office from the said Walter F. Dingley, May 22d, 1895, notifying the company of a change of his address. It was admitted by counsel for the plaintiff that said letter bore the genuine signature of the said Walter F. Dingley, and said letter was offered, admitted, and read in evidence as Defendant's Exhibit "B," and a copy thereof is attached to this bill of exceptions and made a part thereof.

The witness further testified that in pursuance of the directions of said letter, the postoffice address upon the defendant's books of the said Walter F. Dingley was changed from Oakland, Alameda County, California, to Seattle, Washington, Postoffice Box 1272; that the last known postoffice address of said Walter F. Dingley as it appeared upon the books of this company, and as it was known to its officers, was Seattle, Washington, Post office Box 1272.

Said witness also produced the policy register of the company containing the address of the said Walter F. Dingley, and testified that the address is entered in such

book by the policy department from the application signed by the applicant as soon as the policy is issued, and that if the company is notified of any subsequent change in the address of the insured, the correction is entered on the book, and from said book the addresses of the insured are taken for the purpose of mailing notices to the insured in compliance of the statute of New York in that behalf. The witness testified further that the record of the address of Walter F. Dingley which he produced was made in the ordinary course of business, and that said book is a book of original entry so far as the addresses are concerned; that the change of addresses are noted in this book as soon as possible after the request for the same is made.

A copy of the said policy register containing the record of policy No. 628,645, was produced, marked Exhibit "C," and attached to said deposition, and was introduced and read in evidence by the defendant on the trial, a copy of which Exhibit "C" is attached to this bill of exceptions and made a part thereof.

Said witness further testified that the premium on the policy of insurance issued by the defendant company to said Walter F. Dingley, No. 628,645, which fell due July 19th, 1894, being the first premium, amounting to \$158.00, was paid on or about July 19th of said year; that the premium due July 19th, 1895, of \$158 was paid on or about July 19th, 1895. That these were the only premiums which were ever paid on the policy of the said Walter F. Dingley numbered 628,645, being two payments, in all amounting to \$316.00. He further testified that the premium on said policy for the year 1896 fell due



on the 19th day of July of that year, and was never paid by the said Walter F. Dingley, nor by any one on his behalf.

As to the methods employed by the defendant company in transacting its business with reference to the giving of the statutory notice required by the laws of New York, said witness testified:

“Notices in compliance with the laws of New York are prepared at the home office in the month preceding the one in which said premiums would fall due, and are then sent to the branch office managing the company’s business in the territory in which the policy-holder resides. By the mailing clerk in the branch office they are duly mailed to the last known postoffice address of the insured, as indicated by the record of the company. An invoice containing the list of the notices sent by the branch office is prepared by that office, and the mailing clerk then makes an affidavit to the effect that he has mailed the said notices of the due date of the premiums due under the policies indicated in the list, and this affidavit is then sent to the home office for a record of this fact.”

Said witness further testified that the policy in suit was shown on the books of the defendant company to be canceled, and that said cancellation is shown by the policy register, a copy of which was introduced and read in evidence, and is attached to this bill of exceptions as Exhibit “C,” and that it was also shown by the renewal receipt which was sent out with the notice to the branch office, and which was held until the premium was defaulted, and then returned to the home office, and can-

celed. Said renewal receipt was offered with its indorsements and read in evidence as Exhibit "D," and a copy of it is hereto attached and made a part of this bill of exceptions.

And thereupon the said defendant, further to prove and maintain the said issues on its part, offered and read in evidence, over the plaintiff's objection, the affidavit of Ben Clements, the mailing clerk of defendant at its branch office in San Francisco. Said affidavit was shown by the statement of G. H. Durham, accepted by the plaintiff's counsel as if testified to upon the stand, to have been sent from the branch office at San Francisco to the home office at New York, and from the home office of the defendant company in New York to the said G. H. Durham, counsel for the defendant, who produced the same at the trial. A copy of said affidavit so offered and read in evidence by the defendant is attached to this bill of exceptions as a part thereof, marked Exhibit "E," although it was referred to in the record as Defendant's Exhibit "1."

And thereupon the said defendant, further to maintain and prove the said issues on its part, offered and read in evidence the deposition of Ben Clements, its mailing clerk at its San Francisco branch office, which deposition was taken pursuant to stipulation of the parties, providing that such deposition might be taken and read in evidence by either party without objection to the form of interrogatories or the manner of taking, and without any objection except as to the competency, relevancy and materiality of the testimony. Said witness testified, among other things, that he had been in the em-

ploy of the company for about six years; that in the month of June, 1896, he was employed by the defendant company at the office of its Pacific Coast Branch in San Francisco as renewal and mailing clerk, and that he was at that time the person whose duty it was and who was authorized by the company to mail notices of premiums to policy-holders; that pursuant to his duty, during the month of June, 1896, to-wit, on the 27th day of June, 1896, he addressed and mailed to Walter F. Dingley, Post-office Box 1272, Seattle, Washington, a notice, of which the following is a copy:

“2. Bring this card with you when paying premium or enclose it with your remittance.

The New York Life Insurance Company hereby gives notice that on policy No. 628,645 a premium of \$158.00 will be due July 19, 1896, provided the policy be then in force.

This premium will be due and payable at the home office, 346 and 348 Broadway, New York, to the cashier of the company, or to Fred G. Redding, Cashier, Mills Building, San Francisco, Cal., on the production of the official receipt therefor.

Unless such premium then due shall be paid to the company or to a duly appointed agent or person authorized to collect such premium by or before the day it falls due, such policy and all payments thereon will become forfeited and void, except as to the right to a surrender value or paid-up policy which may be provided in said policy, or by statute. This notice is required by the law of New York, and does not modify any of the terms of the contract.

JOHN A. McCALL, President.

Remittance should be made by bank draft, postoffice or express money order, or certified check, payable to the order of the New York Life Insurance Company. [over]

#### Notice to Policy Holders.

No agent has power in behalf of the company to make or to modify any contract of insurance, to extend the time for paying a premium, to waive any forfeiture, or to bind the company by making any promise, or by making or receiving any representation or information. These powers can be exercised only by the president, vice-president, second vice-president, actuary or secretary of the company, and will not be delegated.

All premiums are due and payable at the home office of the company unless otherwise agreed in writing, but any premium may be paid to an agent, producing a receipt therefor, signed by the president, vice-president, second vice-president, actuary or secretary, and countersigned by such agent. If any premium is not thus paid on or before the day when due then (except as otherwise provided) the policy shall become void, and all payments previously made shall remain the property of the company.

If any premium is not paid upon the date when due, a grace of one month is allowed by the company within which the overdue premium will be accepted if paid with interest at the rate of 5 per cent per annum. During this month of grace the policy is continued in full force.

The acceptance of any premium by the company after the expiration of the month's grace is subject to the condition, and upon the express warranty on the part of the

holder of the policy that the insured is in good health, and is not to be construed as a waiver of the conditions of the policy as to future payments nor as establishing a course of dealing between the company and the holder of the policy.

Please notify the branch office to which you pay your premium of any error or change in your postoffice address, in writing, giving the number of each policy now held by you."

Witness further testified that he placed said notice in an envelope, and addressed it as follows: "Walter F. Dingley, Postoffice Box 1272, Seattle, Washington"; that he then affixed United States postage stamp to the envelope in the amount requisite to the prepayment of the postage, and deposited it in the United States postoffice in the city and county of San Francisco, State of California, on the 27th day of June, 1896; that the postage thereon was prepaid by the New York Life Insurance Company at the time he deposited said notice in the postoffice on said 27th day of June, 1896; that he mailed said notice to the address given for the purpose of conforming with the law which requires the mailing of such notice to the insured at his last known postoffice address, and for the reason that that address, Seattle, Washington, was the last known postoffice address of the said Walter F. Dingley; that he did not, nor so far as he knew did any of the officers of the defendant, during the month of June, 1896, or thereafter, know of any postoffice address of such Walter F. Dingley other than Postoffice Box 1272, Seattle, Washington.

Said witness also testified to having seen the letter written by said Walter F. Dingley, notifying the company of his change of postoffice address, a copy of which letter has been attached to this bill of exceptions as Exhibit "B"; and that in accordance with the said letter he caused to be noted a change of address therein referred to in the appropriate places on the said books and records in the said office, and that no other notification of any change of address by the said Walter F. Dingley ever reached his hands or observation; and that on the 27th day of June, 1896, and on the 19th day of July, 1896, the said address noted in the said letter was and remained the postoffice address of the said Walter F. Dingley last known to the said defendant.

He further testified that the premium notices, when they reached the San Francisco office of the defendant from the home office at New York, were immediately given into his charge, and that he had full control of them until they were deposited in the postoffice, addressed to the proper persons.

The defendant thereupon rested its case.

Counsel for the plaintiff sought to offer in evidence certain letters in rebuttal, which were excluded by the Court, and thereupon defendant's counsel passed up to the Court certain instructions in writing, requesting the Court, among other things, to give the same to the jury. The first of said instructions so requested by defendant is as follows:

I.

"By the terms of the contract between the defendant company and the insured, Walter F. Dingley, the date on

which the premium upon his policy of insurance, issued to him by the defendant and sued on in this action, became due and payable, was on the 19th day of July, 1896, notwithstanding the fact that the company had agreed with him that they would not declare a forfeiture of the policy for thirty days thereafter."

The Court refused to give this instruction, to which refusal the defendant then and there excepted, and the exception was allowed.

The second of said instructions so requested by defendant was:

## II.

"I further instruct you that it was incumbent upon the defendant company, before it could declare a forfeiture of the policy upon which this action is brought, to mail to the insured, Walter F. Dingley, at his postoffice address last known to the company, postage prepaid, not less than fifteen nor more than forty-five days before such premium fell due, a notice informing him of the amount of the premium to become due on his said policy, the date when, the place where, and the person to whom the same was payable, and further stating that unless such premium shall be paid to the defendant by or before the day it falls due, the policy and all payments thereon would become forfeited and void. Now, if you shall find from the evidence that the defendant company did mail such a notice to said insured, at his postoffice last known to the company, not less than fifteen days, and not more than forty-five days before the 19th day of July, 1896, postage prepaid thereon, and that said insured did not pay or cause to be paid the premium on said policy of insurance

falling due thereon, on or before said 19th day of July, 1896, nor within thirty days thereafter, then said policy, by its terms, became and was null and void and forfeited, and your verdict must be for the defendant.”

This instruction the Court refused to give, to which refusal the defendant then and there duly excepted, and the exception was allowed.

The third of said instructions so requested by the defendant is as follows:

### III.

“I further instruct you, at request of defendant’s counsel, to specially answer the following questions:

1. Did the defendant company mail, or cause to be mailed, to the insured, Walter F. Dingley, at his postoffice address last known to such company, postage prepaid, a notice informing him of the amount of the premium payable on his policy with the company, the date when, the place where, and the person to whom the same was payable, not less than fifteen nor more than forty-five days before the 19th day of July, 1896, the due date of said premium, and further notifying him that unless such premium was so paid, his policy and all payments theretofore made thereon, would become null and void and forfeited?

2. Did the said insured, Walter F. Dingley, pay or cause to be paid to the defendant company, the premium of \$158 falling due on the 19th day of July, 1896, or within thirty days thereafter?

3. Did the said insured, or anyone on his behalf, ever pay or cause to be paid to the defendant company any premiums on said policy of insurance sued upon in this



action, except the first and second premiums paid in 1894 and 1895”?

The Court refused to give said instruction, or any part thereof, to which refusal the defendant, by its counsel, then and there duly excepted, and the exception was allowed.

The fourth of such instructions so requested by the defendant is as follows:

IV.

“I instruct you to return a verdict in this action in favor of the defendant.”

The Court refused to give the said instruction, to which refusal the defendant, by its counsel, then and there duly excepted, and the exception was allowed.

Thereupon the plaintiff orally moved the Court, by his counsel, to instruct the jury to return a verdict for the plaintiff.

This motion was argued to some extent by counsel for the respective parties, and was thereafter granted by the Court, for reasons, which reasons are as follows:

THE COURT.—“I think that this motion will have to be granted, and these are my reasons:

This is a policy of insurance upon the life of the person named, and was written for and intended to be a continuing contract, subject, however, to be terminated as provided in the contract and in the law of the State of New York under which the business was done, and which enters into and becomes a part of the conditions of the contract. Now, the contract requires the payment an-

nually of the sum of a hundred and fifty-eight dollars as a condition of the insurance. The law of New York, however, steps in and provides that after the contract has gone into effect by the payment of one or more premiums, that the company shall not have the right to terminate its liability unless it gives a notice containing matters which the law specifies must be in that notice. The giving of the notice is a method of procedure prescribed by the statute, and the only way and only method by which the termination of the contract can be effected, so as to relieve the company of its liability. I do not believe that it is necessary that the precise wording of the statute shall be followed in the language of the notice, but the substantial matter of intelligence and warning that the statute requires to be in the notice must be given clearly, explicitly, and unequivocally.

Now, passing by some of the criticisms that have been made upon this notice, and the point most strenuously argued by counsel, that the time of giving the notice was not the proper time, as to which there is a good deal of uncertainty in my own mind, I think this notice is void because of its uncertainty as a warning that the company had, or would, in the event of nonpayment of the premium on a fixed day, exercise its right of election to forfeit the policy. The statute says plainly, 'that the notice shall also state that unless such premium, interest, installment, or portion thereof then due shall be paid to the corporation, or to a duly appointed agent or person authorized to collect such premium by or before the day it falls due, the policy and all payments thereon will become forfeited and void except as to the right to a sur-

render value or paid-up policy as in this chapter provided.'

Now, the intention of this statute is to require the company to inform the insured that it will exercise its right to terminate the contract unless the premium shall be paid by or before a specified date. That notice must be positive and explicit in that regard, because the purpose of it is to place before the insured in a positive manner the consequences of his failure to make the payment on or before the date fixed when payment is to become due. If the company informs him that 'You ought to pay it by that time, and we have a right to declare a forfeiture if you don't pay it,' that has a tendency to lull him to security; and to hope that the company, while it has that right, may not when the time comes, decide to exercise the right, and the intention of the statute is that the insurance company shall not allow an insured person who has been in any such manner as that lulled into security to pass by the date when he should make his payment, and then suffer a forfeiture.

Now, the deposition of Mr. Clements as to what notice he gave sets out that he mailed this notice, which if it had stopped with the signature of the president, would have been probably a legal notice and full compliance with the statute. But that is not all of it. After the matter that is prescribed by the statute, it goes on to say this: 'Notice to policy-holders. No agent has power in behalf of the company to make or to modify any contract of insurance, to extend the time for paying a premium, to waive any forfeiture, or to bind the company by making any promise, or by making or receiving any repre-

sentation or information. These powers can be exercised only by the president, vice-president, second vice-president, actuary or secretary of the company, and will not be delegated. All premiums are due and payable at the home office of the company unless otherwise agreed in writing, but any premium may be paid to an agent producing a receipt therefor signed by the president, vice-president, second vice-president, actuary or secretary, and countersigned by such agent.' And this language, which is directly contradictory of the notice given in the form prescribed in the statute: 'If any premium is not thus paid on or before the day when due, then except as otherwise provided, the policy shall become void and all payments previously made shall remain the property of the company. If any premium is not paid upon the date when due, a grace of one month is allowed by the company within which the overdue premium will be accepted if paid with interest at the rate of five per cent per annum. During this month of grace the policy is continued in full force. The acceptance of any premium by the company after the expiration of the month's grace is subject to the condition and upon the express warranty on the part of the holder of the policy, that the insured is in good health, and is not to be construed as a waiver of the conditions of the policy as to future payments, nor as establishing a course of dealing between the company and the holder of the policy. Please notify the branch office to which you pay your premium of any error or change in your postoffice address, in writing, giving the number of each policy now held by you.'

Now, that is part of the notice which was sent by the mailing clerk and evidently is intended as a notice emanating from the company. The only signature that it bears is the signature of the president of the company, and it plainly informs the person to whom it was addressed, that if the insurance was not paid when due and payable, that he had a month's time after that in which he could pay it if he would pay five per cent interest; and even after that he could pay it, but it would be accepted by the company with an implied warranty that he was still in good health and an insurable subject, the effect of which would necessarily be to lead the mind of the person to suppose that he was in no danger of losing his insurance if he failed to pay on or before the 19th day of July; that he still had the matter open to arrangement by which he could pay and save his insurance. It is like the situation of Mother Eve. The Lord said to her: 'The day that thou eatest thereof, thou shalt surely die,' and the serpent said, 'Thou shalt not surely die,' and she was left to elect which to believe. The insured person is informed in one part of the notice that this insurance will be forfeited unless the premium is paid on or before the 19th of July; the notice goes on then with a voluminous explanation of how that effect will not take place, and it fails entirely to serve as the warning which the statute provides must be given as a condition to the right of the insurance company to forfeit the policy.

I think the plaintiff is entitled to a verdict."

The Court thereupon directed the jury to return a verdict for plaintiff for the amount of \$5,190, which was accordingly done.

To the ruling of the Court in granting plaintiff's said motion for a peremptory instruction to the jury to return a verdict in this case in favor of the plaintiff, and to the giving of such instruction to said jury, the defendant, by its counsel, then and there duly excepted and said exceptions were allowed by the Court.

**Plaintiff's Exhibit No. 1.**

[For Policy, see page 5. See, also, Policy at end of this record.]

**Plaintiff's Exhibit "AA."**

NEW YORK LIFE INSURANCE COMPANY.

346 and 348 Broadway, New York.

Premium \$158.00.

Discount 4.41.

3 pr ct. —————

Received \$153.59, being the annual premium due July 19, 1895, upon policy No. 628645.

Countersigned by John A. McCall, President.

Alex G. Hawes.

[Over]

Notice to Policy-Holders.

No agent has power, in behalf of the company, to make or to modify any contract of insurance, to extend the time for paying the premium, to waive any forfeiture, or to bind the company by making any terms or by making or receiving any representation or information. These powers can be exercised only by the president, vice-president, second vice-president, actuary or secretary of the company, and will not be delegated.

All premiums are due and payable at the home office of the company, unless otherwise agreed in writing, but any premium may be paid to an agent producing a receipt therefor signed by the president, vice-president, second vice-president, actuary or secretary, and countersigned by such agent. If any premium is not thus paid on or before the day when due, then (except as otherwise provided) the policy shall become void, and all payments previously made shall remain the property of the company.

If any premium is not paid upon the date when due, a grace of one month is allowed by the company within which the overdue premium will be accepted if paid with interest at the rate of 5 per cent per annum. During this month of grace the policy is continued in full force.

The acceptance of any premium by the company after the expiration of the month's grace is subject to the condition and upon the express warranty on the part of the holder of the policy that the insured is in good health, and is not to be construed as a waiver of the conditions of the policy as to future payments, nor as establishing a course of dealing between the company and the holder of this policy.

Please notify the branch office to which you pay your premium of any error or change in your postoffice address, in writing, giving the number of each policy now held by you.

**Plaintiff's Exhibit "BB."**

No. E 20270.

Amount \$316.00

**Conditional Receipt.**

Received at San Francisco, State of Cal., this 19th day of July, 1894, of Walter F. Dingley, the sum of three hun-

dred and sixteen 00-100 dollars to be held for him upon the following express conditions, agreements, and understanding:

1st. That if the officers of the home office of the New York Life Insurance Company approve an application made by him this day for insurance of 5,000 dollars, and a policy is issued and delivered to him while living and in good health, said sum shall be applied in payment of the first two annual premiums on said insurance, provided on or before such delivery he shall first pay any balance of such premium.

2d. That unless his application is approved and a policy is issued and delivered to him while living and in good health, and until such first two annual premiums is paid in full, the New York Life Insurance Company incurs no liability except for the return of said sum on surrender of said receipt.

3d. That if a policy is not received within thirty days of this date or a satisfactory reason for delay, a statement of the facts shall be mailed thereon by the holder hereof to the home office of the company for investigation.

4th. That no agent has power on behalf of said company to make any contract of insurance or to bind the said company by making any terms or making or receiving any representation or information.

5th. That this receipt is not valid if any alterations or erasures are made in the printed form.

C. A. PICKARD,

Agent.



Not valid unless signed by C. A. Pickard, A. G. Hawes, Manager, or by an agent duly authorized (by them or him) as per indorsement on back.

(Indorsed)

This receipt is not valid unless signed by

C. A. PICKARD, Gen'l Agent.

ALEX. G. HAWES, Manager.

**Exhibit "A."**

628,645.

Application to the New York Life Insurance Company.

1. Name (in full) of the person applying for insurance on his life: Walter Frederick Dingley.

2. A. Residence: State, California; County, Alameda; Town, Oakland; Street, Fifteenth, No. 830. B. Place of business: San Francisco, San Francisco, Front 204.

3. A. Occupation or employment; if more than one, state all: Commission Merchant Lumber.

Note.—It is not a sufficient answer to state (for example) "merchant," "mechanic," "salesman," or "clerk"; the particular branch of business or trade is to be specified, and full particulars given, especially where the occupation is in any way hazardous.

B. Are you married? Yes.

4. A. Place of birth? San Francisco. B. Race or nationality: White. C. Born on 1st day of January, 1870. D. Age, nearest birthday, 25.

5. If you have any insurance on your life, state in what companies, when taken, the kind of policies, and their respective amounts: I have no insurance except \$10,000, Connecticut Mutual, lapsed, and 371454, N. Y. Life, lapsed.

6. A. Has any proposal or application to insure your life ever been made to any company or agent upon which a policy has not been issued as applied for? A. No. B. If so, when, to what company, etc. B.

7. A. To whom is the insurance applied for to be payable in event of death? (Name in full.) Estate. B. Present residence? C. Relationship to you?

8. If the application is for an endowment or limited endowment policy, to whom is the endowment to be payable at its maturity?

Note.—This question refers only to policies issued on the endowment or limited endowment premium tables, not to policies issued on any life table.

9. A. Do you desire a policy on the “accumulation policy” plan, as set set forth in that policy form? Yes. B. If so, which accumulation period do you select? I select the 20-year accumulation period. C. Do you desire a policy with “premium return” in case of death within the accumulation period? Yes. D. If so, is such return to be equal to one-half or all the premium paid? Equal to all the premiums paid.

10. Sum to be insured, \$5,000. Premium payable annually. On what table? Life 20 premiums in \_\_\_\_\_ years.

Note.—Strike out the rates not desired.

I do hereby agree as follows: 1. That the statements and representations contained in the foregoing application, together with those contained in the declarations made by me to the medical examiner, shall be the basis of the contract between me and the New York Life Insurance Company; that I hereby warrant the same to be full,

complete and true, whether written by my own hand or not; this warranty being a condition precedent to, and a consideration for the policy which may be issued hereon.

2. That inasmuch as only the officers at the home office of said company, in the city of New York, have authority to determine whether or not a policy shall issue on any application, and as they act on the written statements and representations referred to, no statements, representations, promises, or information made or given by or to the person soliciting or taking this application for a policy, or by or to any other person, shall be binding on said company, or in any manner affect its rights, unless such statements, representations, promises, or information be reduced to writing and presented to the officers of said company, at the home office, in this application.

3. That in any distribution of surplus or profits, the principles and methods which may be adopted by said company for such distribution, and its determination of the amount equitably belonging to any policy which may be issued under this application, shall be and are hereby ratified and accepted by and for every person who shall have or claim any interest under such policy.

4. That any policy which may be issued under this application shall not be in force until the actual payment to, and acceptance of the premium by said company, or its authorized agent, during my lifetime and good health.

5. That the contract, contained in such policy and in this application, shall be construed according to the law of the State of New York, the place of said contract being agreed to be the home office of said company in the city of New York.

6. That no suit shall be brought against said com-

pany under said contract after the lapse of two years from the time when the cause of action accrues.

Dated at San Francisco this 19th day of July, 1894.

Signature of the person applying for insurance on his life. (Write the name in full.) Walter Frederick Dingley.

Witness ———— Agent, C. A. Pickard, 93-63.

Received Aug. 1, 1894. Home Office.

ALEX. G. HAWES,

Manager for the Pacific Coast.. Mills Building (2nd floor),  
San Francisco.

Exhibit "A."

**Exhibit "B."**

(Copy.)

W. F. Dingley, Commission.

Seattle, Washn., April 9th, 1895.

(Received May 22, 1895, Home Office.)

Alex. G. Hawes, Esq., San Francisco, Calif.

Dear Sir: I am insured in the New York Life Ins. Co. of N. Y. under policy No. 628,645 for \$5,000.00. When this policy was written my address was Oakland, Alameda Co., Calif. I now reside at Seattle, Wash., and so advise you that you can notify me when my premiums become due, which I would thank you to do at an early date.

Yours truly,

(Signed) W. F. DINGLEY.

Seattle, Wash. P. O. Box No. 1272.

Copy of Exhibit "B."

H. H. BOTTOME.

Pacific Coast Department,  
Mills Building, Second Floor, San Francisco.

ALEX. G. HAWES, Manager.

**Exhibit "D."**

(Copy.) Walter F. Dingley.

NEW YORK LIFE INSURANCE COMPANY.

C. G. 2

8.20

346 & 348 Broadway, New York.

Received \$158, being the annual premium due July 19, 1896, upon policy No. 628645.

Countersigned by Fred G. Redding, Cashier.

John A. McCall, President.

Exhibit "D."

Canceled Sep. 3, 1896.

Comptroller.

Copy of Exhibit "D."

H. H. Bottome, Notary Pub.

[Over]

Notice to Policy Holders.

No agent has power in behalf of the company to make or to modify any contract of insurance, to extend the time for paying a premium, to waive any forfeiture, or to bind the company by making any promise or by making or receiving any representation or information. These powers can be exercised only by the president, vice-president, second vice-president, actuary or secretary of the company, and will not be delegated.

All premiums are due and payable at the home office of the company unless otherwise agreed in writing, but any premium may be paid to an agent producing a receipt therefor, signed by the president, vice-president, second vice-president, actuary or secretary, and countersigned by such agent. If any premium is not thus paid on or before the day when due, then (except as otherwise provid-

ed) the policy shall become void, and all payments previously made shall remain the property of the company.

If any premium is not paid upon the date when due, a grace of one month is allowed by the company within which the overdue premium will be accepted if paid with interest at the rate of 5 per cent per annum. During this month of grace the policy is continued in full force.

The acceptance of any premium by the company after the expiration of the month's grace is subject to the condition, and upon the express warranty on the part of the holder of the policy that the insured is in good health, and is not to be construed as a waiver of the conditions of the policy as to future payments, nor as establishing a course of dealing between the company and the holder of the policy.

Please notify the branch office to which you pay your premium of any error or change in your postoffice address, in writing, giving the number of each policy now held by you.

Entered Sep. 10, 1896. File clerk.

### Exhibit "C."

212 1894

Number.	Date.	Beneficiary.	Insured.	Plan.
E. A.	Aug. 3	Self	Walter F. Dingley	20 Pay Life
628,645			Mcht.	
94-83			Oakland, Alameda, Calif.	
			1870, Jany. 1	
20 Yr. Accumulation		Age 25		
all in 20 Yrs.		204 Front St., San Francisco,		
		Calif.		
	May 24, 95	371,454		
25616		Seattle, Wash., P. O. Box 1272.		
		Date of Med. Exam. 7-19-94.		

Amount.	Premium.	When due.	Extending to.	When paid.	Agent.
5000	158.00	July 19			A. G. Hawes
E. 20270					C. A. Pickard
\$158.00	Lapsed from July, 1896				
7-19-94	Receipt filed, 341,142				
July, 95, Rent to Pol. Dept. Aug. 4, 94.					
Discount 3 per cent return unearned prems. case death.					
Reported dead.					
Nov. 27, 1896.					
Policy-Claims.					
Department.					

212

Premium.	Extending to.	When paid.	Agent.
		Cal., Aug. 4, 94.	
		Renw'g Dep't, Sept. 10, 1896.	
		Sec'y Apl. 5, 1897.	
		Sec'y Aug. 10, 1897.	

Copy Exhibit "C."

HARRY H. BOTTOME.

I hereby certify that I have examined the policy register of the New York Life Insurance Company, and compared this paper with the record of policy 628,645, and that this paper is a true and exact copy of said record.

(Seal)

CHAS. C. WHITNEY.

## Defendants' Exhibit "E."

City of San Francisco,            )  
 County of San Francisco,        ) ss.  
 State of California.             )

Ben Clements, being duly sworn, says: I am, and was at the times hereinafter mentioned, clerk, Pacific Coast Department, of the New York Life Insurance Company, authorized by said company to mail notices of the premiums, interest, or installments or portion thereof, due on the policies in the annexed list, and that in the month of June, 1896, the notice required by section 92, chapter 690, Laws of 1892, State of New York, was duly addressed and mailed by said company to each of the persons whose lives were at the time of said mailing insured respectively by the policies whose numbers are contained in said annexed list, and to each of the assignees of said policies, where notice of assignment had, at the time of said mailing, been given to said company, at his or her last known postoffice address, postage prepaid by said company, at least fifteen and not more than forty-five days prior to the day when the premium, interest, or installment or portion thereof, became payable.

(Signed) BEN CLEMENTS.

Sworn to before me this 6th day of July, 1896.

[Seal]

EUGENE W. LEVY,

Notary Public in and for the City and County of San Francisco, State of California, Mills Building, Fifth Floor, Rooms 7 and 8.

Defts. Ex. "E."



Notice.—The affiant and notary will initial the list attached.

NEW YORK LIFE INSURANCE COMPANY.

No. 1888.

B. C.

B. C.

E. W. L.

N. P.

List of premium notices mailed for Month of July, 1896.

San Francisco Branch Office.

Policy No.	Policy No.	Policy No.	Policy No.	Policy No.	Policy No.	Policy No.	Policy No.
553572	589970	628839	632759	682921	686666	689047	712507
573	601048	842	635050	924	669	071	542
592	603871	866	068	973	674	087	554
630	604599	892	073	991	688	088	714336
676	606513	893	074	993	718	107	363
741	617800	894	075	996	721	112	716635
749	619334	926	076	685015	722	141	725403
766	356	946	077	069	724	154	474
768	385	980	638863	079	773	176	477
770	393	994	639462	143	881	213	478
772	624872	628614	770	155	882	224	411100
781	911	615	641087	156	905	245	Assg.
555932	918	645	125	212	906	311	100
933	920	640	Assignee	215	908	337	
556097	626602	679	125	219	909	346	
109	622	729	314	221	914	380	
131	631	758	383	232	945	691009	
193	632	760	643150	240	958	127	
557883	639	Assignee	290	284	959	162	
558093	666	760	336	310	966	181	
169	675	896	350	329	967	277	
174	713	901	648692	376	969	361	
559998	714	948	657119	686648	970	695951	
585053	791	949	Assignee	649	991	698316	
259	835	950	919	650	998	709850	
587756	836	965	663510	652	689004	859	
760	Assignee	967	669571	658	005	883	
765	836	631468	673931	659	024	923	
589904	837	469	674180	661	040	711530	
905	Assignee	485	676379	663	043	561	
969	837	651	678943	665	044	712407	
		838	632750	682799			
	Assignee			883			
	838						
	Defts. Ex. E.						

**Exhibit C.**

(Clement's Deposition).

266	Perkins	628,645
Page	(Register)	

Dingley, Walter F.

P. O. Box 1272,

Seattle, Washington.

Exhibit "C." Clement's Deposition.

This is what the witness referred to in one of his answers as having been copied by him from the Card Index.

When due.	Number of Policy.	Name.	How paid.	Prem.
July 19	628,645	Dingley	A	158.00

Copy of entry in renewal record (Exhibit "B") Clement's Deposition.

And forasmuch as the facts aforesaid, and the decisions of the Court thereon, do not appear of record, the defendant prays that this, its bill of exceptions, may be settled, allowed, and sealed, and the same is hereby settled, allowed, and sealed accordingly, within the time therefor allowed by the Court by its order heretofore herein made, and the clerk of this court is directed to file the same as of the 25th day of July, 1898, the day on which the same was presented for settlement.

C. H. HANFORD, Judge.

United States of America,	}	ss.
District of Washington,		
City of Seattle, King Co.		

Due and legal service of the within and foregoing bill of exceptions is hereby acknowledged and accepted in

said city of Seattle, in said District of Washington, this 25th day of July, 1898, by receiving a copy thereof duly certified to as such by George H. Durham, one of the attorneys for the defendant and appellant in error, the New York Life Insurance Company, said city of Seattle being the residence of the plaintiff and his counsel.

PRESTON, CARR & GILMAN,

Attorneys for the Plaintiff and Defendant in Error, Frank E. Dingley.

Presented to the Court, after due service upon opposing counsel, for settlement, allowance, signing and sealing, within the time allowed therefor by order of this Court, to-wit, on this 25th day of July, 1898.

C. H. HANFORD, Judge.

[Endorsed]: Defendant's bill of exceptions. Filed July 25, 1898. In the U. S. Circuit Court. A. Reeves Ayres, Clerk. By A. N. Moore, Deputy. Settled and filed July 25, 1898. In the U. S. Circuit Court. A. Reeves Ayres, Clerk. By A. N. Moore, Deputy.

*In the Circuit Court of the United States for the District of  
Washington, Northern Division.*

FRANK E. DINGLEY, as Administra-  
tor of the Estate of Walter Frederick  
Dingley, Deceased,

Plaintiff,

vs.

NEW YORK LIFE INSURANCE COM-  
PANY,

Defendant.

**Assignment of Errors.**

Now comes the New York Life Insurance Company, the defendant above named, and makes and files the following assignment of errors in the above-entitled court and cause, which the said defendant and plaintiff in error will rely upon in the United States Circuit Court of Appeals for the Ninth Judicial Circuit for relief from the judgment rendered in said cause in the court below, and says that in the record and proceedings in the above-entitled matter there is manifest error in this, to-wit:

1st. The Court erred in refusing to give to the jury the first instruction requested by this defendant, which instruction is as follows:

I.

“By the terms of the contract between the defendant company and the insured, Walter F. Dingley, the date on which the premium upon his policy of insurance issued

him by the defendant, and sued on in this action, became due and payable, was the 19th day of July, 1896, notwithstanding the fact that the company had agreed with him that they would not declare a forfeiture of the policy for thirty days thereafter."

2nd. The Court erred in refusing to give to the jury the second instruction requested by the defendant, which instruction is as follows:

## II.

"I further instruct you that it was incumbent upon the defendant company, before it could declare a forfeiture of the policy upon which this action is brought, to mail to the insured, Walter F. Dingley, at his postoffice address last known to the company, postage prepaid, not less than 15 nor more than 45 days before such premium fell due, a notice informing him of the amount of the premium to become due on his said policy, the date when, the place where, and the person to whom the same was payable, and further stating that unless such premium shall be paid to the defendant by or before the day it falls due, the policy and all payments thereon would become forfeited and void.

Now, if you shall find from the evidence that the defendant company did mail such a notice to said insured, at his postoffice address last known to the company, not less than 15 and not more than 45 days before the 19th day of July, 1896, postage prepaid, and that said insured did not pay or cause to be paid the premium on said policy of insurance falling due thereon on or before said 19th day of July, 1896, nor within 30 days thereafter, then

said policy by its terms, became and was null and void, and forfeited, and your verdict must be for the defendant.”

3rd. The Court erred in refusing to give to the jury the third instruction requested by the defendant, which instruction is as follows:

III.

“I further instruct you, at request of defendant’s counsel, to specially answer the following questions:

1st. Did the defendant company mail, or cause to be mailed to the insured, Walter F. Dingley, at his postoffice address last known to said company, postage prepaid, a notice informing him of the amount of the premium payable on his policy with the company, the date when, and the place where and the person to whom the same was payable, not less than 15 nor more than 45 days before the 19th day of July, 1896, the due date of said premium, and further notifying him that unless such premium was so paid, his policy and all payments theretofore made thereon would become null and void and forfeited?

2nd. Did the said insured, Walter F. Dingley, pay or cause to be paid to the defendant company the premium of \$158, falling due on the 19th day of July, 1896, or within 30 days thereafter?

3rd. Did the said insured, or anyone on his behalf, ever pay, or cause to be paid to the defendant company any premiums on said policy of insurance sued upon in this action, except the first and second, paid in 1894 and 1895?”

4th. The Court erred in refusing to give to the jury

the fourth instruction requested by the defendant, which instruction is as follows:

#### IV.

“I instruct you to return a verdict in this action in favor of the defendant.”

5th. The Court erred in granting plaintiff's oral motion for a peremptory instruction to the jury to return a verdict for plaintiff.

6th. The Court erred in directing the jury to return a verdict for plaintiff.

7th. The Court erred in thus directing the jury to return a verdict for plaintiff, and in the reasons given therefor as set forth in his oral opinion, a copy of which, as taken by the official stenographer of the court, is as follows:

“THE COURT.—I think that this motion will have to be granted, and these are my reasons:

This is a policy of insurance upon the life of the person named, and was written for and intended to be a continuing contract, subject, however, to be terminated as provided in the contract and in the law of the State of New York, under which the business was done, and which enters into and becomes a part of the conditions of the contract. Now, the contract requires the payment annually of the sum of a hundred and fifty-eight dollars as a condition of the insurance. The law of New York, however, steps in and provides that after the contract has gone into effect by the payment of one or more premiums, that the company shall not have the right to terminate its liability unless it gives a notice containing



matters which the law specifies must be in that notice. The giving of the notice is a method and procedure prescribed by the statute, and the only method by which the termination of the contract can be effected, so as to relieve the company of its liability. I do not believe that it is necessary that the precise wording of the statute shall be followed in the language of the notice, but the substantial things that are provided for a matter of intelligence and warning that the statute requires to be in the notice must be given clearly, explicitly, and unequivocally.

Now, passing by some of the criticisms that have been made upon this notice, and the point most strenuously argued by counsel, that the time of giving the notice was not the proper time, as to which there is a good deal of uncertainty in my own mind, I think this notice is void, because of its uncertainty as a warning that the company had, or would, in the event of nonpayment of the premium on a fixed day, exercise its right of election to forfeit the policy. The statute says plainly, 'that the notice shall also state that unless such premium, interest, installment, or portion thereof then due shall be paid to the corporation, or to a duly appointed agent or person authorized to collect such premium by or before the day it falls due, the policy and all payments thereon will become forfeited and void, except as to the right to a surrender value or paid up policy as in this chapter provided.'

Now, the intention of this statute is to require the company to inform the insured that it will exercise its right to terminate the contract unless the premium shall be

paid by or before a specified date. That notice must be positive and explicit in that regard, because the purpose of it is to place before the insured in a positive manner the consequences of his failure to make the payment on or before the date fixed, when it shall be paid. If the company inform him that 'you ought to pay it by that time and we have a right to declare a forfeiture if you don't pay it,' that has a tendency to lull him to security; that the company, while it has that right, may not when the time comes, decide to exercise the right, and the intention of the statute is that the insurance company shall not allow an insured person who has been in any such manner as that lulled into security so as to pass by the date when he should make his payment and then suffer a forfeiture.

Now, the deposition of Mr. Clements, as to what notice he gave, sets out that he mailed this notice, which if it had stopped with the signature of the president, would have been probably a legal notice and full compliance with the statute. But that is not all of it. After the matter that is prescribed by or conformed to the statute, it goes on to say this: 'Notice to Policy-Holders. No agent has power in behalf of the company to make or to modify any contract of insurance, to extend the time for paying a premium, to waive any forfeiture, or to bind the company by making any promise or by making or receiving any representation or information. These powers can be exercised only by the president, vice-president, 2nd vice-president, actuary or secretary of the company, and will not be delegated. All premiums are due and payable at the home office of the company unless otherwise

agreed in writing, but any premium may be paid to an agent producing a receipt therefor signed by the president, vice-president, second vice-president, actuary or secretary and countersigned by such agent.' And this language, which is directly contradictory of the notice given in the form prescribed in the statute: 'If any premium is not thus paid on or before the day when due, then except as otherwise provided, the policy shall become void and all payments previously made shall remain the property of the company. If any premium is not paid upon the date when due, a grace of one month is allowed by the company within which the overdue premium will be accepted if paid with interest at the rate of five per cent per annum. During this month of grace the policy is continued in full force. The acceptance of any premium by the company after the expiration of the month's grace is subject to the condition and upon the express warranty on the part of the holder of the policy that the insured is in good health, and is not to be construed as a waiver of the conditions of the policy as to future payments, nor as establishing a course of dealing between the company and the holder of the policy. Please notify the branch office to which you pay your premium of any error or change in your postoffice address, in writing, giving the number of each policy now held by you,' and so on.

Now, that is part of the notice which was sent by the mailing clerk, and evidently is intended as a notice emanating from the company. The only signature that it bears is the signature of the president of the company, and it plainly informs

the person to whom it was addressed that if the insurance was not paid when due and payable, that he had a month's time after that in which he could pay it if he would pay it with a per cent interest; and even after that he could pay it, but it would be accepted by the company with an implied warranty that he was still in good health and an insurable subject, the effect of which would necessarily be to lead the mind of the person to suppose that he was in no danger of losing his insurance if he failed to pay on or before the 19th of July; that he still had the matter open to arrangement by which he could pay and save his insurance. It is like the situation of Mother Eve. The Lord said to her: 'The day that thou eatest thereof, thou shalt surely die,' and the serpent said, 'Thou shalt not surely die,' and she was left to believe which she elected to believe. This insured person is informed in one part of the notice, that his insurance will be forfeited unless the premium is paid on or before the 19th of July; the notice goes on then with a voluminous explanation of how that effect will not take place, and it fails entirely to serve as being the warning which the statute provides must be given as a condition to the right of the insurance company to forfeit the policy.

I think the plaintiff is entitled to a verdict."

8th. The Court erred in rendering and entering a judgment in behalf of the plaintiff, and against this defendant, upon the verdict rendered in said cause.

9th. The Court erred in not rendering and entering a judgment in this cause in behalf of the defendant.

10th. The Court erred in not granting defendant's mo-

tion to set aside said verdict, and to grant defendant a new trial of this action.

11th. That the judgment of the Court rendered in this cause is contrary to the law.

GEO. H. DURHAM,

Attorney for Defendant and Plaintiff in Error, the New York Life Insurance Company.

United States of America, }  
District of Washington, } ss.  
City of Seattle, King Co. }

Due and legal service of the within and foregoing assignment of errors is hereby acknowledged and accepted in said city of Seattle, in said District of Washington, Northern Division, the residence of plaintiff and his counsel, this 25 day of July, 1898, by receiving a copy thereof duly certified to as such by George H. Durham, one of the attorneys for the defendant and appellant in error, the New York Life Insurance Company.

PRESTON, CARR & GILMAN,

Attorneys for the Plaintiff and Defendant in Error,  
Frank E. Dingley.

[Endorsed]: Assignment of errors by defendant and plaintiff in error. Filed July 25, 1898. In the U. S. Circuit Court. A. Reeves Ayres, Clerk. By A. N. Moore, Deputy.

*In the Circuit Court of the United States, District of Wash-  
ington, Northern Division.*

FRANK E. DINGLEY, as Administra-  
tor of the Estate of Walter Frederick  
Dingley, Deceased,

Plaintiff,

vs.

NEW YORK LIFE INSURANCE COM-  
PANY,

Defendant.

### **Order Fixing the Amount of Bond on Writ of Error.**

This cause came on for hearing on the application of the New York Life Insurance Company, defendant, to the Court to fix the amount of bond to be given by said defendant for appeal by writ of error of this cause to the United States Circuit Court of Appeals for the Ninth Circuit, and the Court, upon consideration thereof, hereby fixes the amount of the bond to be given by the said defendant upon said appeal of the said cause at the sum of six thousand (\$6,000.00) dollars.

Seattle, Washington, July 25, 1898.

C. H. HANFORD, Judge.

Filed July 25, 1898. Order fixing amount of bond on writ of error. In the U. S. Circuit Court. A. Reeves Ayres, Clerk. By A. N. Moore, Deputy.

*In the Circuit Court of the United States, District of Wash-  
ington, Northern Division.*

FRANK E. DINGLEY, as Adminis-  
trator of the Estate of Walter Freder-  
ick Dingley, Deceased,

Plaintiff,

vs.

NEW YORK LIFE INSURANCE COM-  
PANY,

Defendant.

**Petition for Writ of Error.**

To the Honorable Judges of the United States Circuit  
Court of Appeals for the Ninth Judicial Circuit:

Now comes the above-named defendant, the New York  
Life Insurance Company, by its attorneys, and complains  
that in the records and proceedings, and also in the ren-  
dition of judgment in the above-entitled cause, in the  
said United States Circuit Court for the District of Wash-  
ington, Northern Division, at the June term thereof, A.  
D. 1898, to-wit, on the 7th day of July, A. D. 1898, mani-  
fest error hath intervened, to the great damage of the  
said defendant:

Wherefore the said defendant prays for the allowance  
of a writ of error, and such other processes as may cause  
the same to be corrected by the said United States Cir-  
cuit Court of Appeals for the Ninth Judicial District.

GEO. H. DURHAM and  
R. W. EMMONS,

Attorneys for Plaintiff.

Allowed July 25th, A. D. 1898.

C. H. HANFORD, Judge.

[Endorsed]: Petition for writ of error. Filed July 25, 1898. In the U. S. Circuit Court. A. Reeves Ayres, Clerk. By A. N. Moore, Deputy.

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*In the Circuit Court of the United States, District of Washington, Northern Division.*

FRANK E. DINGLEY, as Administrator of the Estate of Walter Frederick Dingley, Deceased,	}	Plaintiff,
vs.		
NEW YORK LIFE INSURANCE COMPANY,	}	Defendant.

### Bond on Writ of Error.

Know all men by these presents, that the New York Life Insurance Company, a corporation, the defendant above named, as principal, and the National Surety Company, a surety corporation organized under the laws of the State of New York, with a branch office in Seattle, Washington, as sureties, are held and firmly bound unto Frank E. Dingley, administrator of the estate of Walter Frederick Dingley, deceased, the above-named plaintiff,



in the penal sum of six thousand dollars, for the payment of which, well and truly to be made to the said Frank E. Dingley, his heirs, executors, administrators and assigns, said principal and sureties bind themselves, their and each of their successors, heirs, administrators, and assigns, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 26th day of July, A. D. 1898.

The condition of the above obligation is such that, whereas heretofore, to-wit, on the 7th day of July, 1898, judgment was rendered and entered for the plaintiff in the above-entitled cause and court and against the said defendant; and

Whereas, subsequent to the entry of said judgment in favor of plaintiff, steps were taken in the said action by the defendant therein for the purpose of appealing by writ of error from the said judgment to the United States Circuit Court of Appeals for the Ninth Judicial Circuit;

Now, therefore, if the above-named New York Life Insurance Company shall prosecute said appeal to effect and answer, and pay all damages and costs that may be awarded by the said United States Circuit Court of Appeals against the said New York Life Insurance Company, defendant in the above-entitled action, by reason of the said appeal, if it fail to make said appeal good, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

In witness whereof, the said principal and sureties have hereunto set their hands and seals this 26th day of July, 1898.

NEW YORK LIFE INSURANCE COMPANY,

By GEORGE H. DURHAM,

Its Attorney.

NATIONAL SURETY COMPANY,

[Seal] By HERMAN CHAPIN,

Its Resident Vice-President.

By JAMES BOTHWELL,

Its Resident Assistant Secretary.

The foregoing bond is hereby approved this 26th day of July, 1898.

C. H. HANFORD, Judge.

State of Washington, )  
County of King.        ) ss.

James Bothwell, being duly sworn, on oath deposes and says, that he is, and at the time of the execution of the foregoing bond was, a citizen of the United States, residing in the city of Seattle, Washington, and the duly appointed and acting general agent and resident assistant secretary of the National Surety Company, the company signing the foregoing bond as surety; that said National Surety Company is, and during all said times has been, a corporation duly organized and existing under the laws of the State of New York, having net assets exceeding \$350,000 and a paid-up, unimpaired capital exceeding \$350,000, and authorized, under its charter, to guarantee the fidelity of persons holding places of

public and private trust, to guarantee the performance of contracts, and to execute and guarantee bonds and undertakings required or permitted in actions or proceedings in law or equity, and that said company has, during all of said times, complied with all the provisions of the laws of the State of Washington relating to the execution of bonds and undertakings by surety corporations, and duly authorized by certificate of the Secretary of the State of Washington to transact business in the State of Washington, and that said foregoing bond is executed by due authority of said corporation.

JAMES BOTHWELL.

Subscribed and sworn to before me this 26 day of July, 1898.

[Notarial Seal]

M. B. HAYNES,

Notary Public in and for the State of Washington, Residing at Seattle in said State.

[Endorsed]: Bond on writ of error. Filed July 26, 1898. In the U. S. Circuit Court. A. Reeves Ayres, Clerk. By A. N. Moore, Deputy.

*In the Circuit Court of the United States for the District of  
Washington, Northern Division.*

FRANK E. DINGLEY, as Adminis-  
trator of the Estate of Walter Freder-  
ick Dingley, Deceased,

Plaintiff and Defendant in Error,

vs.

NEW YORK LIFE INSURANCE COM-  
PANY,

Defendant and Plaintiff in Error.

### **Order Sending up Original Papers.**

Now, at this time, on the application of the plaintiff in error, it appearing necessary and proper in the opinion of the presiding Judge who tried said cause in the Circuit Court:

It is ordered that the original policy of insurance declared upon in said action shall be inspected in the Circuit Court of Appeals upon the writ of error herein issued, and to that end the clerk of this court is directed to forward said original policy of insurance, along with the transcript, to the clerk of the Circuit Court of Appeals, who after the hearing of said cause in said Appellate Court, will return said insurance policy to the clerk of this court.

Dated July 26th, 1898.

C. H. HANFORD, Judge.

[Endorsed]: Order to send up original exhibits. Filed July 26, 1898. A. Reeves Ayres, Clerk. By A. N. Moore, Deputy.

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*In the Circuit Court of the United States for the District of Washington, Northern Division.*

FRANK E. DINGLEY, as Administrator of the Estate of Walter F. Dingley, Deceased,

Plaintiff and Defendant in Error,

vs.

NEW YORK LIFE INSURANCE COMPANY,

Defendant and Plaintiff in Error.

**Præcipe for Transcript.**

To the Clerk of said Court:

You will please prepare and forthwith transmit to the United States Circuit Court of Appeals for the Ninth Circuit at San Francisco, California, a complete transcript of the records and proceedings in the above-entitled cause; said transcript to contain the papers filed in said cause in the Superior Court of the State of Washington for King County, and thence removed to said Federal Court, the pleadings and all other papers filed therein, and the general entries made and entered in said cause. The above includes the *entire record*, formal entries, etc.,

save the depositions of the witnesses Whitney and Clements.

Dated July 27th, 1898.

GEORGE H. DURHAM,  
Attorney for New York Life Insurance Company.

[Endorsed]: Praecipe for transcript. Filed July 27, 1898. In the U. S. Circuit Court. A. Reeves Ayres, Clerk. By A. N. Moore, Deputy.

*In the United States Circuit Court of Appeals for the Ninth Circuit.*

FRANK E. DINGLEY, as Administrator of the Estate of Walter F. Dingley, Deceased,

Plaintiff and Defendant in Error,

vs.

NEW YORK LIFE INSURANCE COMPANY,

Defendant and Plaintiff in Error.

No.

### Writ of Error (Copy.)

The United States of America—ss.

The President of the United States of America, to the Judges of the Circuit Court of the United States for the District of Washington, Northern Division,  
Greeting:

Because in the records and proceedings, as also in the rendition of the judgment of a plea which is in the Circuit Court, before the Honorable C. H. Hanford, one of you, between Frank E. Dingley, as administrator of the estate of Walter F. Dingley, deceased, plaintiff and defendant in error, and the New York Life Insurance Company, defendant and plaintiff in error, a manifest error hath happened, to the great damage of the said plaintiff in error, as is said and by complaint doth appear; and we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid, and in this behalf do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals for the Ninth Circuit, together with this writ, so that you have the same at San Francisco, California, within thirty days from the date hereof, in the said Circuit Court of Appeals to be then and there held; that the record and proceedings aforesaid being then and there inspected, the said Circuit Court of Appeals may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States of America should be done.

Witness, the Honorable MELVILLE W. FULLER,  
Chief Justice of the Supreme Court of the United States,  
this 29th day of July, 1898.

[Seal U. S. Circuit Court] A. REEVES AYRES,  
Clerk of the Circuit Court of the United States for the Dis-  
trict of Washington, Northern Division.

By R. M. Hopkins,  
Deputy Clerk.

Allowed: C. H. HANFORD, Judge.

[Endorsed]: Writ of Error. Filed July 29, 1898. A.  
Reeves Ayres, Clerk. By H. M. Walthew, Deputy.

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**Citation (Copy).**

United States of America, }  
District of Washington, } ss.  
Northern Division. }

To Frank E. Dingley, as Administrator of the Estate of  
Walter F. Dingley, Deceased, Greeting:

You are hereby cited and admonished to be and  
appear before the United States Circuit Court of  
Appeals for the Ninth Circuit, at San Francisco,  
California, within thirty days from the date here-  
of, pursuant to a writ of error filed in the clerk's  
office of the Circuit Court of the United States for  
the District of Washington, Northern Division, wherein  
the New York Life Insurance Company is plaintiff in er-  
ror, and you are defendant in error, to show cause, if any  
there be, why the said judgment in the said writ of error



mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Given under my hand at Seattle in said District, this twenty-ninth day of July, 1898.

[Seal U. S. Circuit Court]

C. H. HANFORD,

Judge.

United States of America, }  
District of Washington, } ss.  
Northern Division. }

Due and legal service of the foregoing citation, together with the writ of error and supersedeas bond filed herein, is hereby admitted and accepted in Seattle, the residence of said defendant in error, and his attorneys, in said District, this 3rd day of August, 1898, by receiving copies thereof duly certified to as such by a proper certifying officer.

E. M. CARR,

L. C. GILMAN,

HAROLD PRESTON,

Attorneys for Defendant in Error, Frank E. Dingley, as  
Administrator of the Estate of Walter F. Dingley,  
Deceased.

[Endorsed]: Citation. Filed August 3, 1898. A.  
Reeves Ayres, Clerk. By H. M. Walthew, Deputy.

*In the Circuit Court of the United States for the District of  
Washington, Northern Division.*

FRANK E. DINGLEY, as Adminis-  
trator of the Estate of Walter F. Ding-  
ley, Deceased,

Plaintiff,

vs.

NEW YORK LIFE INSURANCE COM-  
PANY,

Defendant.

No. 647.

**Clerk's Certificate to Transcript.**

United States of America, }  
District of Washington. } ss.

I, A. Reeves Ayres, Clerk of the Circuit Court of the United States for the District of Washington, do hereby certify the foregoing one hundred and fifteen (115) type-written pages, numbered from one (1) to one hundred and fifteen (115), both inclusive, to be a full, true, and correct copy of the record, and of all the proceedings had in the above-entitled cause, and that the same constitutes the transcript of the record upon appeal and the return to the annexed writ of error in said cause from the Circuit Court of the United States for the District of Washington, Northern Division, to the United States Circuit Court of Appeals for the Ninth Judicial Circuit, save and excepting the Original Exhibit "B," which said exhibit, by

order of Court, I am directed to forward to the Circuit Court of Appeals, there to be inspected and considered together with this transcript, which said order so directing me will be found on page 111 of the foregoing transcript.

And I further certify that the cost of preparing and certifying the said transcript on appeal, and return to writ of error, is the sum of thirty-four dollars and eighty-five cents (\$34.85), and that the cost of certifying to the Exhibit "B" above mentioned is the sum of thirty-five cents (35 c.), and that said sums, aggregating thirty-five dollars and twenty cents (\$35.20), have been paid to me by George H. Durham, Esq., attorney for defendant and plaintiff in error.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Circuit Court this 13 day of August, A. D. 1898.

[Seal]

A. REEVES AYRES,  
Clerk of the Circuit Court of the United States for the  
District of Washington.

By R. M. Hopkins,  
Deputy Clerk.

*In the United States Circuit Court of Appeals for the Ninth  
Circuit.*

FRANK E. DINGLEY, as Adminis-  
trator of the Estate of Walter F.  
Dingley, Deceased,

Plaintiff and Defendant in Error,

vs.

NEW YORK LIFE INSURANCE COM-  
PANY,

Defendant and Plaintiff in Error.

No.

**Writ of Error (Original).**

The United States of America—ss.

The President of the United States of America, to the  
Judges of the Circuit Court of the United States for  
the District of Washington, Northern Division,<sup>21</sup>  
Greeting:

Because in the records and proceedings, as also in the  
rendition of the judgment of a plea which is in the Cir-  
cuit Court before the Honorable C. H. Hanford, one of  
you, between Frank E. Dingley, as administrator of the  
estate of Walter F. Dingley, deceased, plaintiff and de-  
fendant in error, and the New York Life Insurance Com-  
pany, defendant and plaintiff in error, a manifest error  
hath happened, to the great damage of the said plain-  
tiff in error, as is said and by complaint doth appear; and  
we, being willing that error, if any hath been, should be  
duly corrected and full and speedy justice done to the  
parties aforesaid, and in this behalf, do command you, if

judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals for the Ninth Circuit, together with this writ, so that you have the same at San Francisco, California, within thirty days from the date hereof, in the said Circuit Court of Appeals to be then and there held; that the record and proceedings aforesaid being then and there inspected, the said Circuit Court of Appeals may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States of America should be done.

Witness, the Honorable MELVILLE W. FULLER, Chief Justice of the Supreme Court of the United States, this 29th day of July, 1898.

[Seal]

A. REEVES AYRES,

Clerk of the Circuit Court of the United States for the District of Washington, Northern Division.

By R. M. Hopkins,

Deputy Clerk.

Allowed:

[Seal]

C. H. HANFORD,

Judge.

[Endorsed]: Filed July 29, 1898. A. Reeves Ayres, Clerk. By H. M. Walthew, Deputy.

**Citation (Original.)**

United States of America, }  
 District of Washington, } ss.  
 Northern Division. }

To Frank E. Dingley, as Administrator of the Estate of  
 Walter F. Dingley, Deceased, Greeting:

You are hereby cited and admonished to be and appear before the United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, California, within thirty days from the date hereof, pursuant to a writ of error filed in the clerk's office of the Circuit Court of the United States for the District of Washington, Northern Division, wherein the New York Life Insurance Company is plaintiff in error and you are defendant in error, to show cause, if any there be, why the said judgment in the said writ of error mentioned should not be corrected and speedy justice should be done to the parties in that behalf.

Given under my hand at Seattle, in said District, this twenty-ninth day of July, 1898.

[Seal]

C. H. HANFORD,  
 Judge.

United States of America, }  
 District of Washington, } ss.  
 Northern Division. }

Due and legal service of the foregoing citation, together with the writ of error and supersedeas bond filed herein, is hereby admitted and accepted in Seattle, the

residence of said defendant in error, and his attorneys, in said District, this 3d day of August, 1898, by receiving copies thereof duly certified to as such by a proper certifying officer.

E. M. CARR,  
L. C. GILMAN,  
HAROLD PRESTON,

Attorneys for Defendant in Error, Frank E. Dingley as  
Administrator of the Estate of Walter F. Dingley,  
Deceased.

[Endorsed]: Filed August 3, 1898. A. Reeves Ayres,  
Clerk. By H. M. Walthew, Deputy.

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[Endorsed]: No. 466. In the United States Circuit  
Court of Appeals for the Ninth Circuit. The New York  
Life Insurance Company, Plaintiff in Error, vs. Frank E.  
Dingley, as Administrator of the Estate of Walter F.  
Dingley, Deceased, Defendant in Error. Transcript of  
Record. In Error to the Circuit Court of the United  
States for the District of Washington, Northern Division.  
Filed August 18, 1898.

F. D. MONCKTON,  
Clerk.







DO TH PROMISE AND AGREE

to pay Five thousand Dollars

Age 30 at its Office in the City of New York, to the insured

Executors, Administrators

or Assigns, immediately upon receipt and approval of proofs of the death during the continuance of this Policy

of William J. Sullivan

of Buffalo in the County of Warren, State of New York

(herein called the insured).

And the said Company doth further Promise and Agree, that if the death of the insured

shall occur prior to the 1st day of April in

the year Nineteen Hundred and ten, and if the premiums have been paid in full to the time of such death,

then it will pay, in addition to the sum above insured, an amount equal to the total premiums

received (taken at the tabular annual rate).

This Contract is made in Consideration of the written application for this Policy, and of the

agreements, statements and warranties thereof, which are hereby made a part of this Contract, and in further

consideration of the sum of Five thousand Dollars

and 00 Cents, to be paid in advance, and of the payment of a like sum on the 1st day

of July in every year thereafter

during the continuance of this Policy, until seventy full years' premiums shall have been paid.

**INCONTESTABILITY.** After this Policy shall have been in force one full year, if it shall become a claim by

death, the Company will not contest its payment, provided the conditions of the Policy as to payment of premiums

have been observed.

The benefits and provisions placed by the Company on the next page are a part of this Contract, as fully as if

recited over the signatures hereto affixed.

In Witness Whereof, the said NEW-YORK LIFE INSURANCE COMPANY has, by its duly authorized

Officers, signed and delivered this Contract, this 1st day of July one thousand

eight hundred and ninety 00

Examined.  
C.  
Limited Payment  
Life.  
Accumulation.  
L. F. R.  
04-03.

Secretary. John A. McFall President

**BENEFITS AND PROVISIONS REFERRED TO IN THIS POLICY.**

Benefits at End of Accumulation Period.

If the insured is living on the 19th day of July in the year Nineteen Hundred and fourteen on which date the ACCUMULATION PERIOD of this Policy ends, and if the premiums have been paid in full to said date, the insured shall be entitled to one of the six benefits following:

FIRST.—To continue the Policy, without further payment of premiums, and receive the dividend then apportioned by the Company, either:

- (1) in Cash; or
- (2) in an Annuity; or
- (3) in additional Paid-up Insurance, conditioned upon satisfactory re-examination.

SECOND.—To exchange the Policy for its entire value, as stated below (\*), either:

- (4) in Cash; or
- (5) in an Annuity for life; or
- (6) in a Paid-up Policy, provided that for any amount of paid-up insurance in excess of the face amount of this Policy a satisfactory re-examination is necessary.

\* [The entire value of the Policy consists of the guaranteed Reserve Twenty-one hundred and forty Dollars (\$ 2140), and in addition thereto the dividend then apportioned by the Company.]

The insured shall notify the Company, in writing, prior to the end of the ACCUMULATION PERIOD, which benefit is selected. Failing such notification, the apportioned dividend shall be applied to the purchase of an Annuity as stipulated in benefit (2) above.

Dividends.

NO dividend shall be apportioned or paid on this Policy before the end of the ACCUMULATION PERIOD. If this Policy is continued in force beyond the ACCUMULATION PERIOD, a dividend will be apportioned to the insured at the end of each period of five years thereafter.

Advances within Accumulation Period.

THE Company will make advances as loans upon this Policy at the fifth or any subsequent anniversary of the insurance, within the ACCUMULATION PERIOD, under the following conditions:

FIRST.—That premiums are paid in full to the time when the loan is made, including the premium for the entire insurance year then beginning.

SECOND.—That the aggregate amount of loans outstanding from the sixth to the tenth years, inclusive, shall not exceed \$ 4000; from the eleventh to the fifteenth years, inclusive, shall not exceed \$ 900; and from the sixteenth to the twentieth years, inclusive, shall not exceed \$ 1000.

THIRD.—That the Policy shall be duly assigned to the Company as collateral security for the loans, and deposited at the Home Office.

FOURTH.—That interest at the rate of five per cent. per annum shall be paid upon all such loans at the anniversary of the insurance next succeeding, and annually thereafter until the loans are paid off.

FIFTH.—That the loans shall be for such time as the borrower may elect, not longer however than to the end of the ACCUMULATION PERIOD.

[Any indebtedness to the Company, including any balance of the current year's premium remaining unpaid, will be deducted in any settlement of this Policy or of any benefit thereunder.]

Powers Not Delegated.

NO agent has power in behalf of the Company to make or modify this or any contract of insurance, to extend the time for paying a premium, to waive any forfeiture, or to bind the Company by making any promise or making or receiving any representation or information. These powers can be exercised only by the President, Vice-President, Second Vice-President, Actuary or Secretary of the Company, and will not be delegated.

Payment of Premiums.

ALL premiums are due and payable at the Home Office of the Company unless otherwise agreed in writing, but may be paid to agents producing receipts signed by the President, Vice-President, Second Vice-President, Actuary or Secretary, and countersigned by such agents. If any premium is not thus paid on or before the day when due, then (except as hereinafter otherwise provided) this Policy shall become void, and all payments previously made shall remain the property of the Company.

Grace.

AFTER this Policy shall have been in force three months, a grace of one month will be allowed in payment of subsequent premiums, subject to an interest charge of five per cent. per annum for the number of days during which the premium remains due and unpaid. During the said month of grace the unpaid premium, with interest as above, remains an indebtedness due the Company, and in the event of death during the said month, this indebtedness will be deducted from the amount of the insurance.

Proofs of Death.

WITHIN one year after the death of the insured the Company must be furnished at its office in the City of New York, with proofs of death which shall comprise satisfactory statements establishing the claim. Such statements must comply fully with the Company's present forms. If it is found that the age of the insured was understated in the application, the amount of insurance payable shall be such proportion of the amount of the Policy as the premium paid bears to the required premium at the true age.

Assignments.

ANY assignment of this Policy must be made in duplicate, and both copies must be sent to the Home Office, one of them to be retained by the Company. The Company has no responsibility for the validity of any assignment.

Non-forfeiture.

AFTER this Policy shall have been in force three full years, in case of non-payment of any premium subsequently due, and upon the payment within thirty days thereafter of any indebtedness to the Company on account of this Policy, and provided the Policy has not been terminated by death within the month of grace allowed in the payment of premiums, (1) the insurance will be extended for the face amount, as provided in the Table below; or (2) on demand made within six months after such non-payment of premium due, with surrender of this Policy, paid-up insurance will be issued for the reduced amount provided in the said Table; or (3) the Policy will be re-instated within the said six months, upon payment of the overdue premium with interest at the rate of five per cent. per annum, if the insured is shown by evidence satisfactory to the Company to be in good health.

**TABLE OF GUARANTEES, IF PAYMENT OF PREMIUMS IS DISCONTINUED,**

Provided there is no indebtedness against the Policy.  
(PURSUANT TO THE INSURANCE LAW [CHAPTER 500, LAWS OF 1892] OF THE STATE OF NEW YORK.)

If the Premiums are paid—	(1) The insurance of \$ <u>5000</u> (without participation in profits) will be extended—	or (2). The Policy may be converted into non-participating paid-up insurance—
to July 19 1897	to Aug 19 1902	of \$ 750
" " " 1898	" Oct " 1906	" 1000
" " " 1899	" Jan " 1911	" 1250
" " " 1900	" May " 1914	" 1500
" " " 1901	" Feb " 1915	" 1750
" " " 1902	" June " 1921	" 2000
" " " 1903	" " " 1924	" 2250
" " " 1904	" Feb " 1927	" 2500
" " " 1905	" Dec " 1929	" 2750
" " " 1906	" June " 1932	" 3000
" " " 1907	" Sept " 1934	" 3250
" " " 1908	" Oct " 1936	" 3500
" " " 1909	" Sept " 1938	" 3750
" " " 1910	" July " 1940	" 4000
" " " 1911	" Apr " 1942	" 4250
" " " 1912	" Nov " 1944	" 4500
" " " 1913	" Oct " 1945	" 4750

*Seal of U.S. Circuit Court (Certifying this assignment)*

# Abstract (E. & O. E.) of the Application for Insurance in the New-York Life Insurance Co.

1. Name (in full) of the person applying for insurance on his life: Frederick Douglas

2. A Residence: State California County Stanislaus Term Orlando Street F. Leath No. ...  
 B Place of Business: Commissioner Merchant & Co.

3. A Occupation or Employment: If more than one, state all Commissioner Merchant & Co. | B Are you insured?  
 Note:—If it is not sufficient to give the nature of the business, "Merchant" "Salesman" "or" "Clerk" the principal branch of business in which he is engaged, and the particular gross receipts when the occupation is in any kind of business.

4. A Place of birth: Massachusetts | B Race or Nationality: White | C Born on ... day of ... 18... | D Age nearest Birthday: ...

5. If you have any insurance on your life, state in what companies, what kinds, the kinds of policies, and their respective amounts: I have no insurance except \$10,000 Commercial Mutual ... and \$1,000 of Life ...

6. A Has any proposal or application to insure your life ever been made to any company or agent, upon which a policy has not been issued or applied for? Yes  
 B If so, when, to what company, &c.

7. A To whom is the insurance applied for to be payable in event of death? (Name in full): Estate  
 B Present residence?  
 C Relationship to you?

8. If the application is for an Endowment or Limited-Endowment Policy, to whom is the Endowment to be payable at its maturity?  
 NOTE:—This question refers only to policies issued on the 7th January or Limited-Endowment policies issued, see no policies issued on any Life table.

9. A Do you desire a policy on the "Accumulation Policy" plan, as set forth in this policy form? Yes  
 B If so, which Accumulation Period do you select?  
 C Do you desire a policy with "Premium-Reverse" in case of death within the Accumulation Period?  
 D If so, is such reverse to be equal to one-half or all the premiums paid?  
 I select the ... your Accumulation Period.  
 Equal to ... the premiums paid.

10. Sum to be insured, \$ 1000  
 Premium payable: Annually, Semi-Annually, Quarterly Do you wish to die? Ordinary Life, Life, Term, Endowment, Payable as, ...

I DO HEREBY AGREE as follows:— 1. That the statements and representations contained in the foregoing application, together with those contained in the declarations made by me to the Medical Examiner, shall be the basis of the contract between me and the New-York Life Insurance Company, and I hereby warrant the same to be full, complete and true, whether written by my own hand or not; this warranty being a condition precedent to, and a consideration for the policy which may be issued hereon. 2. That inasmuch as only the officers at the Home Office of said Company, in the City of New-York, have authority to determine whether or not a policy shall issue on any application, and as they act on the written statements and representations referred to, no statements, representations, promises, or information made or given by me or the person soliciting or taking this application for a policy, or by or for any other person, shall be binding on said Company, or in any manner affect its rights, unless such statements, representations, promises, or information be reduced to writing, and presented to the officers of said Company, at the Home Office, in this application. 3. That in any distribution of surplus or profits, the policies and methods which may be adopted by said Company for such distribution, and its determination of the amount equally belonging to any policy which may be issued under this application, shall be and are hereby ratified and accepted by and for every person who shall have or claim any interest under such policy. 4. That any policy which may be issued under this application shall not be in force until the actual payment to, and acceptance of the premium by said Company, or its authorized agent, during my lifetime and good health. 5. That the contract, contained in such policy and in this application, shall be construed according to the law of the State of New-York, the place of said contract being agreed to be the Home Office of said Company in the City of New-York. 6. That no suit shall be brought against said Company under said contract after the lapse of two years from the time when the cause of action accrues.

Dated at Orlando this ... day of ... 18... by Fred. Douglas  
 Witness, A. Pickard  
 Signature of the person applying for insurance on his life (Write the name in full): Frederick Douglas

## Declarations made to the Medical Examiner of the New-York Life Insurance Company.

1. Have you had, since childhood, any of the following complaints? Answer (Yes or No) opposite each:

Apoplexy	No	Disease of Kidneys	No	Gout	No	Stomach	No	Give full particulars of any serious illness you may have had since childhood
Asthma	No	Disease of Liver	No	Isaemia	No	Scalds	No	never has been
Bilious Colic	No	Disease of Lungs	No	Jandice	No	Scald-Pox	No	
Cancer	No	Disease of Urinary Organs	No	Paralysis	No	Spinal Disease	No	Who were you last confined to the house by illness?
Dropsy	No	Furuncle	No	Piles	No	Spring or Rising Blisters	No	
Disease of Brain	No	General Debility	No	Pleurisy	No	Syphilis	No	How?
				Pneumonia	No	Yellow Fever	No	

2. Have you ever had severe Headaches, Vertigo, Pina, or any nervous or muscular trouble? No

3. A Are you subject to Cough, Expectoration, Palpitation or Difficulty of Breathing?  
 B Have you ever been? If so, in which, when, and full details.  
 A No  
 B No

4. Are you subject or predisposed to Dyspepsia, Dysentery or Diarrhoea?  
 A No  
 B No

5. A What is the name and residence of your physician?  
 B When, and for what, have his services been required?  
 C If so, when, and for what?  
 A None  
 B None  
 C None

6. A Has any proposal or application to insure your life ever been made to any company or agent, upon which a policy has not been issued or applied for?  
 B If so, when, to what company, &c.  
 A No  
 B No

7. Has any physician given an unfavorable opinion upon your life with reference to Life Insurance?  
 If so, state particulars.

8. The Medical Examiner must obtain full and clear answers to each of the following queries. Avoid all indefinite terms:

Age of Grandfather	Condition of Health	Age at Death	Cause of Death	How Long Ill	Previous Health
Father	...	...	...	...	...
Mother	...	...	...	...	...
Brothers	...	...	...	...	...
Sisters	...	...	...	...	...
Father's Mother	...	...	...	...	...
Father's Father	...	...	...	...	...
Mother's Father	...	...	...	...	...
Mother's Mother	...	...	...	...	...

9. A Have any of the above or any of your uncles or aunts now or ever had Consumption, Cancer, Gout, Scrophula, Diabetes, Rheumatism, Epilepsy, Insanity or other hereditary disease?  
 B If so, give full particulars of each case.  
 A No  
 B No

10. A Are you habitually at the present time, and have they always been, sober and temperate?  
 B To what extent do you use intoxicating drinks as a beverage? (Average amount daily)  
 C Are you now engaged in any way in the retailing of alcoholic liquors?  
 D Have you ever been so engaged?  
 A Yes  
 B No  
 C No  
 D No

11. A Where have you resided (during summer and winter) during each of the last ten years?  
 B Do you contemplate changing your place of residence or making a journey? (Yes or No). If yes, when and to what place?  
 A ...  
 B ...

12. A How long have you been engaged in your present occupation?  
 B What was your business prior to your present occupation?  
 C Do you contemplate making any change, temporary or permanent, in occupation? (Yes or No). If yes, when and to what?  
 A ...  
 B ...  
 C ...

I HEREBY DECLARE that the accompanying application to the New-York Life Insurance Company dated ... for an insurance on my life was signed in the fact that I swore and confirm my answers therein, and I also agree that I expressly waive all provisions of law forbidding any physician or other person who has attended or examined me, from disclosing any knowledge or observations which he lawfully acquired.

Plffs Ex "B" No 64

No. 628645

# New-York Life

INSURANCE COMPANY.

Assurance on the Life of

Walter T. Dingley

Amount, \$ 2000

C. A. FICARD  
Agent.

No 466  
U S CIRCUIT COURT OF APPEALS  
FOR THE NINTH CIRCUIT.  
\*\*\*\*\*  
N. Y. LIFE INSURANCE CO. )  
v )  
FRANK E. DINGLEY, Admr, &c )  
\*\*\*\*\*  
PLFFS. EX. "B"  
\*\*\*\*\*

RECEIVED AUG. 18th, 1898,  
W. H. Van Wanz  
Clerk.

Plaintiffs Exhibit B

FILED JUL 1 1898 189  
IN THE  
U S CIRCUIT COURT  
At New York City  
By W. H. Van Wanz  
Clerk

*In the Circuit Court of the United States for the District of  
Washington, Northern Division.*

FRANK E. DINGLEY, as Adminis- trator of the Estate of Walter F. Dingley, Deceased,	} Plaintiff,	No. 647.
vs.		
NEW YORK LIFE INSURANCE COM- PANY,	} Defendant.	

**Clerk's Certificate.**

United States of America, }  
District of Washington. } ss.

I, A. Reeves Ayres, Clerk of the Circuit Court of the United States for the District of Washington, do hereby certify the attached Policy of Insurance to be the Original Exhibit "B" introduced and used in evidence upon the trial of the above entitled cause, which, by order of court, I herewith certify and transmit to the Circuit Court of Appeals for the Ninth Judicial Circuit, there to be inspected and considered together with the transcript on appeal in this cause, which said order so directing me to transmit said exhibit will be found on page 111 of the said original transcript.

In Testimony Whereof I have hereunto set my hand and affixed the seal of said Circuit Court this 13th day of Aug. 1898.

A. REEVES AYRES,

Clerk of the Circuit Court of the United States for the  
District of Washington.

By \_\_\_\_\_, Deputy Clerk.

Clerk

*Wm. M. Dingley*

RECEIVED AUG. 18th, 1898,

PLFFS. EX. "B"

W. M. DINGLEY, Admr., &c.)  
V.  
) LIFE INSURANCE CO.

R THE NINTH CIRCUIT.  
CIRCUIT COURT OF APPEALS

No. 466

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